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No. 2286½—1322½ L.R.

A. MACKENZIE, Esq.,
Secretary to the Government of Bengal.

To

THE SECRETARY TO THE BOARD OF REVENUE.

Dated DARJEELING, *the* 15*th July* 1880.

I AM directed to forward, for the consideration of the Board of Revenue, a y of the Report of the Rent Law Commission, and accompanying papers, uding a *Draft of a Bill to consolidate and amend the Law of Landlord Tenant within the territories under the administration of the Lieu- nt-Governor of Bengal.* Commissioners and District Officers have also n furnished with copies direct from this Office. I am to request that Board will first invite the attention of those officers to the points in the port and Bill which seem to the Board to call for particular consideration and ussion, and then, after digesting and analysing their replies, submit to vernment a comprehensive review of the whole subject. This review should ch Government not later than the end of November.

2. The following are some of the questions raised by the Draft Bill, which Lieutenant-Governor would wish to have generally and carefully considered. hopes that the Board will impress upon officers in the interior the import- ce of ascertaining the views of all classes of persons interested in land upon se and all other changes of moment suggested by the Commission:—

CHAPTER I.

3. The provisions of the Bill for defining more precisely the distinction tween tenure-holders or under-tenure-holders and ryots are new, and call for tailed criticism. The Board are well aware of the difficulties surrounding is question, and of the manner in which it constantly comes up in settle- ents, especially in the eastern districts and the Sunderbuns. The Commission ve discussed it very fully in paragraphs 13 to 23 and 36 of their Report; and section 11 of the Bill have put forward an arbitrary rule for the determina- n of such status, based on the quantity of land included in a single holding letting. This provision has to be read with those of sections 9, 10, and 12, ying down the limits of enhancement in the case of tenures and under-tenures. s probable effect upon the position of persons holding what are now usually assed as large ryotty jotes, in districts like Rungpore and Noakholly, should carefully analysed and tested by concrete examples.

4. The effect of the limitations placed in the Bill on the enhancement of e rent of tenures and under-tenures generally should also be fully investi- ated.

CHAPTERS III AND IV.

5. A distinction is drawn in these Chapters between ryots who have held nd for twelve years and ryots who have held for three or more, but less than welve years. The former are declared to have rights of occupancy, as, under he existing law, their holdings, and theirs only, are subject to all the legal ncidents of the occupancy tenure as defined in the Bill; their rents are regulat- d by the detailed rules of enhancement laid down in Chapter III; and to hem only applies the elaborate enhancement procedure set forth in Chapter V. The ryots of Chapter IV are not deemed to have rights of occupancy, but

they are evidently deemed to be something more than mere tenants-at-will. Their landlord may demand from them any rent he pleases; but if they are forced thereby to relinquish their lands, he must give them one year's enhanced rent as compensation for disturbance, besides the value of their improvements. On referring to Chapter XV, the Lieutenant-Governor finds that the scheme of enhancement devised by the Commission amounts practically, and in its essence, to a proposal to re-establish a system of authoritative local rent rates as the equivalent, in fact, of the old pergunnah rates, and to place the determination of these in the hands of the Revenue authorities. But if an authoritative local rates system is established in the manner proposed, the wording of the old Regulations would lead to the conclusion that it should apply generally to *all* non-privileged cultivators within the tract affected by it. Ryots who have held over three, but less than twelve, years are, in fact, settled cultivators, who are fast developing into the statutory occupancy ryots. On their attaining the statutory tenure, their rents should equitably be regulated by the Collector's Table of Rates, and in any future enhancement proceedings they would be treated in the same way as other occupancy ryots. It certainly seems anomalous that they should be liable to pay higher rates meantime, and be able to claim compensation for what they choose to consider excessive demand—a right which is not allowed to the occupancy ryot himself. At present, as the Lieutenant-Governor gathers from the reports on Sir Richard Temple's enhancement proposals, the village rent rates for ordinary occupancy and non-occupancy ryots are the same in most districts; and the Collector's Table of Rates would probably be gladly accepted as a satisfactory settlement of the rates for all classes of resident cultivators. If so, it would certainly seem to be simpler to omit Chapter IV of the Bill, and declare that the right of occupancy, involving the obligation of paying rent according to the Collector's Table of Rates, should attach to all ryots holding land for three years or more. It might be necessary to make exceptions to meet the case of cultivators of *chur* lands and the like; but the Lieutenant-Governor would wish to know what *practical* objections there are to the course now suggested. *Primâ facie*, it would tend to simplify considerably the classification of the agricultural community, and the relations of landlords and tenants.

6. In section 19, explanation 3 (*a*), it is proposed to confer the right of occupancy on the sub-tenants of *makuraridars* and *istimrardars*. I am to ask if there is any good reason why this should not be done.

7. In clause (*c*) of the same explanation it is explicitly declared that the sub-tenant of an occupancy ryot, holding *otherwise* than for a term, or year by year, has himself a right of occupancy; and by clause (*c*) of section 23 the rent of the holder of such a sub-occupancy right is limited to a rate slightly higher than that of the occupancy ryot. This sub-occupancy right is said to be contemplated by the existing law, but the Lieutenant-Governor doubts whether such a tenure exists in practice. It would, perhaps, be simpler to treat the tenants of occupancy ryots as mere tenants-at-will, which is all that they usually are.

8. Under explanation 4, clause (*h*) of the same section, a landlord is, under certain circumstances, allowed to prevent the acquisition of the occupancy right by exacting a written contract to that effect from an in-coming tenant. If it is desirable, on grounds of public policy, as the Lieutenant-Governor considers it is, to make the occupancy right general and valuable, it is a question how far contract should be allowed to interfere. The proposals of the Commission under this head should be carefuly considered. They may, perhaps, be deemed to suggest a reasonable compromise between the two extreme views that may be held on this subject.

9. Section 20 sets out the legal incidents of the occupancy tenure. The propriety of making it transferable by private sale and gift is recognised by the Commission, and the Lieutenant-Governor believes, under the circumstances of Bengal, rightly recognised. Attention in invited to the limitations placed on the general right of transfer: the tenure is not to be saleable in execution of any decree other than a decree for its own arrears of rent, and it may not be mortgaged. The grounds of these restrictions are given in paragraph 32 of the Commission's Report. Their validity should be investigated and their probable effect discussed.

10. By clause (*e*) ejectment for arrears is done away with, but ejectment is allowed for breach of *any* stipulation in respect of which the landlord and tenant may have contracted in writing that ejectment should be the penalty for breach thereof. This clause assumes that the ryot is in an independent condition when contracting. The Lieutenant-Governor shares the doubts as to the propriety of this provision, referred to in paragraph 34 of the Commission's Report.

11. The provisions of section 21, regarding rent in kind, should receive attention.

12. The substantive provisions of sections 22 and 23 regarding enhancement are very important, and should be carefully considered with reference to the remarks of the Commission in paragraphs 46 to 62 of their Report. The proposal to take one-fourth of the average annual value of the gross produce as the *maximum limit* or *ultimate test* of the equity of the occupancy ryot's rent will probably meet with general acceptance. The Commission do not, it will be seen, propose to take a share of the gross produce as the ordinary *standard* of rent, but leave enhancement to be made upon the grounds recognised by the present law as now more clearly defined and explained.

CHAPTER VI.

13. The provisions of this Chapter, bearing on the use of land for building purposes, are novel, and will no doubt meet with adequate criticism (see paragraphs 108 to 113 of the Commission's Report). It will probably be deemed desirable to settle this question once for all. The question of what percentage on the market value is a fair rent for building land should be carefully looked into. Possibly it should be settled from time to time, for each district or part of a district, by the Collector's Table of Rates, if it is decided eventually to have this prepared authoritatively for particular tracts, irrespective of individual applications for enhancement.

CHAPTER VII.

14. The provisions of the Chapter on Merger are explained in paragraphs 114 and 115 of the Report. They are designed to remove difficulties that not unfrequently crop up under the system of sub-infeudation so common in Bengal.

CHAPTER VIII.

15. The Board will doubtless give due consideration to the sections bearing on the registration of the transfers of tenures, under-tenures, and occupancy holdings (paragraphs 116 to 121 of the Report).

CHAPTER IX.

16. Much of the matter of this Chapter has been already discussed very fully, and practically settled. The sections calling specially for criticism are those relating to the deposit of rent, the apportionment of rent, and the hypothecation of all tenures and holdings for the rent thereof (paragraphs 125 to 133 of the Report).

CHAPTER X.

17. The Chapter on co-parceners is explained in paragraphs 134 to 137 of the Report, and should receive careful attention.

CHAPTER XI.

18. The sections in this Chapter, which most call for notice, are perhaps section 77 regarding tenants' improvements and the ryots' right to trees, and section 80 providing for the disposal of the crop on the ground in cases of ejectment. The effect of these sections upon existing local customs should be investigated. Clause (9) of section 79, read with No. 16 of the third Schedule attached to the Bill, compels an auction-purchaser to elect to avoid subordinate tenancies within one year of his purchase. This seems to be a useful provision.

CHAPTER XII.

19. This is a special Chapter for Behar. The Lieutenant-Governor trusts that it will be carefully studied by all officers in that Province with reference to paragraphs 146 to 156 of the Report. It might also be usefully considered by Bengal officers whether some of the sections, such, for instance, as 84 and 85, might not be made general in their application.

CHAPTER XV.

20. This Chapter provides an elaborate procedure for enhancing the rents of occupancy ryots and tenure-holders. Its provisions are explained at length in paragraphs 63 to 97 of the Report. The Lieutenant-Governor, as at present advised, is very much disposed to concur in the view taken by Mr. Dampier in his remarks appended to the Bill. It might even be sufficient to provide that the Revenue authorities, or specially selected officers working in conjunction with the district officers, should from time to time settle authoritative tables of rates for all districts or parts of districts, the rest being left to the civil courts, except, perhaps, in the cases described in section 112, *et seq.* The Lieutenant-Governor will not, however, attempt to prejudge the question, but desires that the fullest criticism may be applied to this portion of the Bill, and that the Board will submit eventually their matured conclusions as to accepting or modifying the proposals of the Commission.

CHAPTER XVIII.

21. In this Chapter is set forth the procedure devised by the Commission for the trial of ordinary rent-suits. They are of opinion that it is impossible to go further in the direction of summary trial without risk of injustice to one or other of the parties concerned; and certainly all the modes of summary procedure hitherto suggested have been open to grave objections upon that score. Judicial officers are in the best position to judge of the value of the procedure now suggested, and the Lieutenant-Governor hopes to receive a full expression of their views, and of those of the Hon'ble Judges of the High Court, on this Chapter. It will be well, however, that the Revenue authorities should also examine this part of the Bill, and make any remarks that occur to them in connection with it, after studying the detailed explanations of its tenor, contained in paragraphs 174 to 189 of the Commission's Report.

22. The schedule of limitation is explained in paragraphs 159 to 162 of the Report, and should not be overlooked.

No. 2286¾—1322¾ L. R., dated Darjeeling, the 15th July 1880.

From—A. MACKENZIE, ESQ., *Secretary to the Government of Bengal.*

To—The Registrar of the High Court, Calcutta.

I AM directed to forward, for the use of the Court, 12 copies of the Report of the Rent Law Commission, and of the connected papers, and to say that the Lieutenant-Governor would be glad if the Hon'ble Judges would, in consideration of the great importance of the subject, not only consent to favour the Government with their own views upon the whole subject, but permit the Reports of subordinate judicial officers to be forwarded through the Court, and submitted to its criticism.

2. Copies of the Report and papers have been sent from this Office direct to all District Judges, and the papers have also been published in the Gazette, so that all judicial officers are in a position to consider the matter, if the Court were willing to order them to report thereon to it instead of to Government.

3. I am to forward, for the information of the Hon'ble Judges, a copy of a letter addressed to the Board of Revenue, showing the points upon which the Lieutenant-Governor specially desires to learn the views of district and divisional officers and of the Board.

THE REPORT

OF

THE RENT LAW COMMISSION.

WE, the Commissioners appointed to consider the question of amending the Rent Law of the Lower Provinces of Bengal, have the honor to make the following Report:—

Twofold instruction given to the Commission.

§ 1. By the orders of the Government conveyed to us on our appointment we were instructed (1) to prepare a careful Analysis and Digest of the existing Rent Law, as contained in the Acts and Regulations concerned with this subject and in the decisions of the Courts since the passing of Act X. of 1859; and (2), after considering the suggestions for amendment that have been put forward of late years, to endeavour to prepare a Draft Bill embodying such additions to the substantive law, and such improvements in the law of Procedure, as might be found advisable.

Digest submitted in August last.

§ 2. The Digest was first compiled by our colleague, Mr. Field, and was submitted on the 19th August last with our Secretary's letter No. 14 of that date.

Scope of the Draft Bill.

§ 3. The Draft Bill has now been prepared and is submitted with this Report. In the Digest was collected the whole of the Statute law and the Case law connected with the subject of Landlord and Tenant in the Lower Provinces of Bengal, that is, the whole of the law in its existing state. In making this compilation it was thought desirable to take in as wide a field as possible, and to include everything concerned less or more with the subject in hand. Any question as to whether a particular fragment of the law should find a place in the work was decided in favour of admissibility, if only its relevancy were at all apparent. Scantiness of materials might have involved the oversight of something of importance, while from a superabundance it was easy to select all that might well be incorporated in a consolidating enactment. This branch of the law, like many others, is more or less connected with some of the remaining branches, and it is not always easy to decide where the exact line of demarcation should be placed. In settling this question for the purposes of the Draft Bill, it seemed to us advisable to omit all matter contained in *special* or *local* enactments, not because any such matter contained in the Digest has not a sufficiently clear connection with the Law of Landlord and Tenant, but because it appeared to us to have a still more intimate connection with the context in which it is at present to be found. In accordance with this view the following portions of law, though included in the Digest, are omitted from the Draft Bill:—

Portions of law omitted from the Draft Bill though contained in the Digest.

I.—The special procedure for the realization of rents in estates under the management of the Court of Wards or of the Revenue Authorities.

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IV.—The details of the law relating to the avoidance of tenancies by a Sale for Arrears of Government Revenue.

V.—The effect of a Partition of a revenue-paying estate upon tenancies therein.

The law as to the resumption and assessment of *lakhiraj* lands by proprietors (see Articles 75 and 83 of the Digest) has also been omitted, as this subject has now ceased to have any special connection with the Law of Landlord and Tenant, and suits brought to resume and assess lands alleged to be held under invalid grants fall within the category of civil suits (see Act VII. (B.C.) of 1862).

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The law as to the resumption and assessment of *lakhiraj* lands by proprietors (see Articles 75 and 83 of the Digest) has also been omitted, as this subject has now ceased to have any special connection with the Law of Landlord and Tenant, and suits brought to resume and assess lands alleged to be held under invalid grants fall within the category of civil suits (see Act VII. (B.C.) of 1862).

With these exceptions, and one more important exception about to be noticed, the Draft Bill contains the law embodied in the Digest with those amendments and alterations which we[1] feel justified in recommending after such consideration and deliberation as the importance of the whole subject demands.

Proposed abolition of Distraint.

§ 4. The Bill does not reproduce the provisions of the existing law upon the subject of Distraint, and we propose to abolish altogether this mode of proceeding for the recovery of rent. This offset of English law was originally introduced into this country by Regulation XXII. of 1793, which empowered certain specified landlords to distrain and sell the crops and products of the earth of every description, the grain, cattle, and all other personal property (whether found in the house or on the premises of the defaulter or of any other person) belonging to their tenants. This continued to be the law until 1859, when the power of distraint was limited to the produce of the land on account of which the rent is due. There can be little doubt that this change considerably impaired the coercive efficacy of this procedure as a means of recovering rent; and we are afraid that the provisions of the present law are not always strictly attended to. There is evidence of positive abuse of these provisions in Behar; and the experience of some of us is that they have not always been used in a regular manner in other parts of the country. We have had before us certain suggestions for shortening and improving this procedure, and have considered whether by their adoption it might not be made safely efficacious to a greater extent than it hitherto has been; but a majority of us finally came to the conclusion that it might well be omitted from any consolidating and amending Act. It is to be observed that this conclusion is in accordance with the greater number of the votes of the members of the Behar Rent Committee and of the Behar Indigo Planters' Association.

Powers of Settlement Officers excluded from the operation of the Bill.

Merger in the case of Government.

§ 5. Neither the Digest nor the Bill incorporates the law relating to the powers and duties of Settlement Officers. This subject has very recently occupied the attention of the Bengal Legislative Council, and has been dealt with by Act VIII. (B.C.) of 1879, which received the assent of the Governor General on the 22nd May last year. It has appeared to us that any re-opening of this portion of the law on the present occasion would but needlessly complicate a subject already sufficiently intricate. In connection with this topic we may, however, refer to a question which has occasionally created difficulties of a peculiar nature, and which we have attempted to solve by a section of the Draft Bill. The difference between *Revenue* and *Rent*, which was not always present with sufficient clearness to the minds of those charged with the earlier administration of these Provinces, has of late years been very distinctly realized by most persons concerned with the subject. This difference, though discernible in the abstract, is not, however, equally manifest in the particular instance, when we come to cases in which the paramount title belonging to the State and carrying with it the right to receive the *revenue*, and the proprietary title carrying with it the right to receive the *rent* have met in the person of Government. Do the two titles continue to co-exist, each preserving its own incidents? Or is one, and, if so, which of them, swallowed up and lost in the superior essence of the other? In other words, do the tenants, after that the two titles have come into the hands of Government, pay *rent* or *revenue?* The settlement of the question is important, not merely as regards the mode of recovering arrears, but as regards other important interests. We have provided in Section 45 that it is, and always has been, the law, that, when the Secretary of State for India acquires an estate by purchase or otherwise, the proprietary interest is merged in the paramount title. We have endeavoured to guard this provision so as to prevent injury to the rights and interests of third parties; and we have saved the operation of Act VIII. (B.C.) of 1879, which defines and limits the powers of Settlement Officers, and also the operation of the Public Demand's Recovery Act.

The Bill does not in any way depend upon the existence of Patwaries.

§ 6. The revival of the office of Patwari has recently engaged the attention of Government, and there are different views as to the advisability and probable utility of rehabilitating these remains of a former system, which the working of our administration has effectually subverted. After full consideration, it has been lately decided by Government that zemindars shall no longer be required to keep up *Patwaris* in Bengal and Orissa. As to Behar, the question is still undetermined. We do not consider that it falls within the sphere of our present duty to discuss or express any opinion on this question; but it will be well to say that no portion of the Draft Bill depends upon the revival or maintenance of *Patwaris*. We may observe that the Behar Rent Committee do not deem it desirable to incorporate the law relating to *Patwaris* with the Rent Law.

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[1] The plural of the pronoun of the first person—"we"—is used throughout this *Report* to express the unanimous opinion of the Members of the Commission, or, where the questions are unimportant, the opinion of the majority. Where the questions are important and the Members are not unanimous, the opinion adopted is expressly stated to be that of the majority. Some Members have appended to the *Report* an expression of their views on particular points.

Suggestions not adopted in the Bill.

Suggestion that contracts of tenancy should be in writing.

§ 7. It will be convenient to notice here certain suggestions which have received our attentive consideration, but the matter of which finds no place in the Draft Bill, inasmuch as the result of our deliberations has been not to recommend their adoption. The first, and probably the most important, of these is that all contracts of tenancy should be required by law to be in writing. This is a suggestion which has been repeatedly made, and on more than one occasion supported by high authority. The majority of the tenancies in Bengal and Behar depend upon custom rather than contract. However suitable a law requiring contracts of tenancy to be made in a particular form may be for a community in which the idea of contract, being early developed, rapidly permeated all classes, we think that it is not equally suited for a community over which custom exercises a powerful influence, whilst more admiration is accorded to the ingenuity with which a contract is broken than to the honesty which respects its binding force. The Legislature of 1793 directed its efforts to the introduction of written engagements between landlord and tenant, and the Regulations of that time contain more than one homily upon the advantages that would surely accrue to both parties from the use of such written engagements, but neither party was in the least persuaded or converted; and finally, a law was rescinded in which neither party saw sufficient benefit to himself to induce him to enforce it against the other. The little use made of the provisions of the existing law, which enable the ryot to sue for a pottah or the landlord for a kabuliyat, goes far to shew that the race of landlords and tenants in Bengal has not much altered its mind on this point since the time of the Permanent Settlement. The experience of the Registration Offices indicates that writing is commonly used in the creation of *new* tenancies, and we think it more advisable to leave the adoption of writing to its natural growth, which will no doubt be encouraged by the spread of education amongst the cultivating classes, than to force upon the people a law fashioned according to Western rather than Eastern ideas.

Omission of the law as to pottahs and kabuliyats and suits for obtaining them.

§ 8. Closely connected with this point is the omission from the Draft Bill of any provisions similar to those of the existing law as to ryots being entitled to pottahs, and landlords being entitled to kabuliyats, and the procedure for enforcing the rights so declared. We have just observed that very little use has been made of these provisions by those for whose benefit they were intended. This observation was more particularly concerned with their use as a means of reducing to writing the conditions regulating the relation of landlord and tenant. There is, however, another purpose for which they might have been used, that is, as a means to obtain an authoritative settlement of some essential question connected with the tenancy and in dispute between the parties thereto—the rate of rent, for example, or the quantity of land held by the tenant. The landlord may contend that the ryot holds twenty bighas of land, while the ryot declares that he has but fifteen. Year after year the contention is renewed. The landlord threatens a measurement, which the ryot, afraid of a venal *Amin* and a varying pole, desires to avoid. A bribe to the *gomashtah* or compliance with some petty cess defers the final settlement of the question for a year; and the following year it arises again, perhaps deterring the ryot from going to his landlord's *kachahri* to pay his rent, lest he should be subjected to a demand, the justice of which he will not admit. Or some fields in the ryot's holding are by him maintained to be second class rice land and assessable with the prevailing or usual rate for land of this class, whilst the landlord avers that they are first class rice land and should pay a higher rent. At every rent day the point is discussed; and in a country where any discussion is prone to beget a wrangle, seldom conducted with a seemly choice of expressions, an amount of irritation is kept up which is not in harmony with the friendly relations which should exist between a landlord and his tenantry. It is very desirable that facility be afforded for the ready settlement of questions like these which are constantly arising in this country, more especially in consequence of the absence of boundaries and fences and the want of an exact survey upon an uniform standard. It might have been thought that the landlord in the first case could easily have the question settled by tendering a pottah and demanding a kabuliyat for twenty bighas; and the landlord in the second case, by tendering a pottah and demanding a kabuliyat for the field as first class rice land: but if the land turned out to be nineteen and a half bighas instead of twenty, or one of the fields was found to be of some middle class kind of land, the suit, according to the decision of the highest tribunal in India, must fail, and the parties be sent away, the real question in dispute unsettled, and their feelings roused and embittered by litigation. Thus, these provisions of the existing law have become ineffectual for the only purpose for which the people cared to use them and for which they might have been beneficially used. While omitting what has been found useless in practice, we have endeavoured to supply the want thus indicated by experience. Section 151 of the Draft Bill accordingly allows either landlord or tenant to sue for the determination of any such questions which may arise between them. A copy of the decree passed in the case will have all the effect of a pottah or kabuliyat upon the point which the parties themselves wish to have determined.

Inadvisable to create fresh penalties for the levy of Illegal Cesses.

§ 9. We do not think it desirable that any further attempt be made to suppress the levy of illegal cesses by fresh measures of punitive legislation. The Draft Bill reproduces the provisions of the existing law, which enable a tenant, from whom any sum of money is exacted by his landlord in excess of the rent lawfully payable, to recover the sum so exacted, together with damages not exceeding double such sum. This, of course, in no way interferes with a resort to the criminal courts, if the exaction has been accompanied by any circumstances which constitute an offence under the Penal Code. The ryots, as a body, are daily becoming better acquainted with their rights. The creation of sub-divisions and the opening of criminal courts in the interior of districts are calculated to prevent oppression by rendering the means of redress more easy and certain. We believe that the operation of these principles of improvement will in time reduce this particular offence to the ordinary level of normal malefaction, and that this result would in no way be accelerated by the addition of fresh penalties to those which are to be found in the existing law.

Definitions of terms—"Estate," "Proprietor," "Tenure," "Under-tenure."

§ 10. Turning now to the Draft Bill, it will be convenient to follow its arrangement, to a certain extent, in discussing the alterations and amendments which we propose to make in the law. This arrangement will be sufficiently understood from the *Table of Contents* prefixed to the Bill. We shall only observe here that the Substantive Law has been placed in Part I and the Adjective Law or Procedure in Part II. And, first, we have endeavoured to define the terms "estate," "proprietor," "tenure," and "under-tenure," so as to create distinct ideas of what is really meant, and avoid the confusion which has arisen from using these terms indiscriminately to signify the same and different things.[2] We have defined "estate" to mean land included under one entry in any of the General Registers of revenue-paying and revenue-free lands. It thus means the interest immediately below the paramount interest which Government has in the land. The owner of an estate is termed a "proprietor." The interest next below an estate and superior to that of a ryot we have defined to be a "tenure," and the owner of a tenure to be a "tenure-holder." Under a tenure and above the ryot's interest comes an "under-tenure," the owner of which is an "under-tenure-holder." If there are more than one of such middle interests, they are termed under-tenures of the first, second, &c., degree. We thus get down to the ryot whom we have defined to be "a person who holds land, or occupies and cultivates land, if such person was originally let into possession of such land for the purpose of cultivating it or bringing it into cultivation;" adding that "a person cultivates land or brings land under cultivation within the meaning of this definition when the cultivation is carried on by himself, or by the members of his family, or by servants, or by hired labourers,

"Ryot."

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[2] In some of the Acts of the Bengal Council the terms "tenure" and "under-tenure" are used indiscriminately for the same thing. One Act speaks of "patni taluks and *other* saleable under-tenures." Now, a *patni* is not an under-tenure, but a tenure, and is so spoken of throughout Regulation VIII. of 1819.

or by persons to whom he has sublet the land or any part of it, or partly by some and partly by others of these persons." We shall presently have more to say about the ryot, when we come to consider some cases in which there is some difficulty in saying whether a certain class of persons ought to be regarded as ryots or tenure-holders (or under-tenure-holders). The ryot's interest is his "holding" and, where he has a right of occupancy, an "occupancy holding."

"Holding," "Occupancy holding."

"Rent."

§ 11. The definition of "rent" presented some difficulty, as opinions differ about what rent really is in India. We have endeavoured to express what we hope will be accepted as a reasonable view of the subject, and have defined *rent* to be "whatever is payable or deliverable by a tenure-holder, under-tenure-holder, or occupancy ryot to the proprietor, tenure-holder, or under-tenure-holder possessing the interest immediately superior in the land held by him, in recognition and statisfaction of such superior interest; or whatever is payable or deliverable as a return or compensation for the use or occupation of land, or for any rights of pasturage, forest rights, fisheries, or the like." The full force of this definition will be more clearly understood after reading our subsequent discussion of the theory of rent which we conceive to be applicable to this country. The only other definition which requires particular notice is that of "land". Certain portions of Acts X. of 1859 and VIII. (B.C.) of 1869 have been construed to apply only to land used for agricultural or horticultural purposes, or the like. Whether the remaining portions are limited in their application is a broad question, which has never been settled, while some have contended that the provisions of these Acts as to the recovery of arrears of rent apply to the rent of any land, irrespective of the purpose for which it is used. It has never been doubted that the rents of tenures and under-tenures are recoverable under these Acts, and these commonly include much more than land used for agricultural or horticultural purposes. We have endeavoured by our definition to make this question clear for the future; and, according to this definition, the provisions of the Bill will be applicable to land used for all such purposes as are usual in this country. We have defined *bastu*, or homestead land, to be land used for agricultural purposes when it is occupied by a ryot, and together with the land cultivated by such ryot forms a single holding. With respect to *bastu* land occupied by non-agriculturists, we have considered certain suggestions as to the hardship of persons who have occupied such land for very many years being liable to arbitrary ejectment, and we have provided generally for land used for building purposes in Chapter VI. the provisions of which we shall notice in order.

"Land."

"Bastu Land."

Saving of Custom and Customary rights.

§ 12. We have provided that nothing in the Bill shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions. The mode of proving custom is not very well understood in this country, and unfortunately, notwithstanding a *dictum* of Sir Barnes Peacock to the contrary, an idea got to prevail that Act X. had superseded all customs and was intended to do away with all agricultural rights, except those specially mentioned and provided for in that Act. We believe that there are many local customs, in this as well as in every other country, well understood by the people, recognized by the landlords, and susceptible of proof in the courts of justice; and we think it very desirable to make it clearly understood that the Bill is not intended to interfere with any of these, unless they have been expressly rescinded by, or are clearly inconsistent with, its provisions.

Question as to whether certain classes of agriculturists should be regarded as Ryots or Tenure-holders.

§ 13. It will be convenient to consider here a question to which we have referred above, namely the difficulty of saying with regard to certain classes of the agricultural community whether they should be placed in the category of ryots, or in that of tenure-holders or under-tenure-holders. We think that the usual conception of a "ryot" is that he is the cultivator of the soil. If holdings had all been of such a size that they could be cultivated by a single average family, and if the practice of sub-letting had never come into existence, the ryot would in all probability still be the cultivator of the soil in every case. But the practice of sub-letting has become very common. Even where the holding is of such a size that an average family can cultivate it, it is not uncommon for the holder to take to some other employment than agriculture and to sub-let his paternal fields. Then there are in many districts *farms*, as we may term them in the English sense of the word, lots of land, too large for cultivation by any ordinary family in a country where cultivation is not conducted by capitalists, largely employing hired labourers and agricultural machinery. The size of these lots forbids the presumption that the original lessees contemplated cultivating them either with their own hands or through the members of their families, or by hired labour; and all that we know of their history tends to negative the existence of any such intention. It will be important to describe the position of persons of this class in a few districts.

The Jotedars of Rungpore.

§ 14. As to Rungpore, we take the following passage from a letter of Mr. Glazier, the Collector, written in 1876:—"The ryot who holds direct from the zemindar is called a *jotedar*, and his holding is a *jote*, whatever its size, which may and does vary from one paying a rent of one rupee to one of which the rent is a half a lakh. The large majority of *jotedars* have small holdings and are ryots proper, cultivating their lands either by their own or hired labour, or on the system of *adhiyari* or halvers, but a large number of *jotedars* have ryots under them who are called either *chukanidars* or *kurpa prajas*. The *chukanidars*, too, have often ryots under them, and in some cases, especially in the larger *jotes*, there are four or more degrees before you get to the actual cultivator. *Jotes* are saleable quite irrespective of the term during which they have been held, whether *jotes* held direct from the zemindar, or *chukani jotes* which are held from a *jotedar*. If a man gets a *jote* to-day he can legally transfer it by sale to-morrow. Such sales of *jotes* by registered deed or on decree of court are of daily occurrence." There is a strong resemblance between the interests in land in Rungpore and those found in the Bhootan Dooars. Mr. Glazier says that when the *jotedar* pays Rs. 100 he collects Rs. 200 from the actual cultivators.

The Howladars, &c., of Backergunge.

§ 15. In Backergunge there are as many as thirteen persons having successive interest in the land inferior to that of the proprietor or zemindar. These interests are—(1) taluk, (2) zimba taluk, (3) shamilat taluk, (4) ashat taluk, (5) nim ashat taluk[1], (6) howla, (7) ashat howla, (8) nim ashat howla, (9) nim howla, (10) ashat nim howla, (11) mirass karsha, (12) kaim karsha, (13) karshadar or ryot. The origin of most of the taluks and howlas appears to have been a grant of a considerable tract of waste land upon favourable terms as to rent to some one who undertook to bring it under cultivation. The grantee reclaimed portions and sub-let portions to smaller reclaiming tenants; or perhaps sub-let the whole if he could find tenants to reclaim it. These sub-lessees sub-let again; and the sub-letting was carried still lower, until the whole tract was divided into holdings of a manageable size for single families. The number of grades doubtless varied with the size of the tract originally leased, and with the denseness of the population in the particular locality. Not uncommonly those who had reclaimed land sub-let it when the demand for land increased; or a person who had taken enough for two or three holdings reclaimed and retained enough for one and sub-let the remainder. It is easy to imagine the intricacy of interests which must have been the result of such a system. Sometimes the zemindar's grantee embarked a little capital, making advances to needy ryots forced out by the pressure of population from densely inhabited localities, and thus enabling them to buy ploughs and cattle and seed, and build homesteads. This was probably necessary at starting a new settlement. As matters progressed, and if the venture was successful, new settlers had to pay a *salami* or fine to the grantee before he assigned them lots in his grant. In many instances the chief capital taken to the work of reclamation was the labour of those who accompanied the grantee as a leader in whom they had confidence. Where the waste has been wholly reclaimed and the land fully occupied, we find persons occupying the double position of landlord and tenant, paying rent for an entire lot, cultivating part, and sub-letting part to persons who perhaps again repeat the process. In the case of persons called "talukdars" no difficulty appears to have arisen, the word "taluk" carrying with it a definite kind of meaning, and being found as well in the old Regulations as in Act X. of 1859. With the *howladars*, however, the state of the case is not so clear. Are they talukdars? Do they hold an under-tenure in the vague sense in which the word has hitherto been used? If so, what is its nature, and what are its incidents? Are they ryots entitled to acquire a right of occupancy; and, if so, what becomes of the middlemen below them and the actual cultivator of the soil at the bottom? Act X. supplies no answer to these questions, and the courts have not yet settled them. The *howla* interest has come by custom to be regarded a heritable, transferable, and permanent so long as the rent is paid, but subject to enhancement. The Government in settling some of its own estates has treated the *howladars* as the occupancy ryots, and has declared that they are at liberty to make their own arrangements with the persons holding under them without interference on the part of the Settlement Officers.

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[1] In certain settlement proceedings of Noakholly it is said that *ashat talukdars* and *nim ashat talukdars* are tenants of the same kind with *howladars* and *nim howladars*.

The Aymadars of Midnapore.

§ 16. Persons in an apparently similar position are to be found in other districts under various appellations, such as *jangalburi ryots, mandals, aymadars.* The origin of all is probably similar, though the exact rights accorded to each by custom may vary in different districts. In Midnapore the Settlement Officer, Mr. Price, found certain *aymadars* who were receiving from ryots subodinate to them rents one hundred per cent. higher than those which they were paying to Government. Some of these *aymadars* who would not agree to the terms offered them by the Settlement Officer were put aside, and the settlement was made with the tenants immediately below them. Litigation ensued, and these *aymadars* were declared by the civil court to be ryots having a right of occupancy. It would appear, however, that though the subordinate tenants were parties to this case, it was substantially decided between the Government and the *aymadars.* It would have been more satisfactory if these tenants had taken an active part in the pleadings, and in consequence their position had also been fully considered in determining the rights of the *aymadars.*

The Mandals of Midnapore.

See No. 507 A from Secretary to Board of Revenue, to Secretary to Government of Bengal, dated 8th June 1877.

§ 17. In parts of Midnapore bordering on the Jangal Mahals there is a class of persons termed mandals who came into existence in the following nanner: The zemindar granted a tract of waste land to a substantial ryot, termed an *abadkar,* who undertook to bring it under cultivation, paying the zemindar a stipulated lump sum as rent. This *abadkar,* partly by the labour of his own family and dependants, and partly by including other ryots to settle under him, gradually reclaimed the greater part of the grant and established a village upon it, to which he usually gave his name, and, as the head of the settlement, he was called mandal or headman. The *zemindar* and the *mandal* from time to time re-adjusted the terms of their bargain, but the *zemindar* never interfered between the *mandal* and his under-tenants. In settlement proceedings of 1839 these *mandals* were declared to have only the rights of *sthani* or *khudkasht* ryots, and not to be entitled to any *munafa* or profit; but though not exactly recognized as *talukdars,* they gradually acquired rights superior to those of ordinary *khudkasht* ryots; and as they were left to make their own terms with the ryots settled by them, they must have had a very considerable profit besides what they obtained from any land cultivated by themselves. Their *mandali* right became transferable by custom; and, when at settlement they came into immediate contact with Government, though not recognized as regular *talukdars,* they were held entitled to the consideration which in Bengal has usually been accorded to the first reclaimer of the virgin soil. The Government in settlement proceedings deducted fifteen per centum from the gross *jama* in their favour, and, after some demur, they accepted this as a sufficient recognition of their *status.*

Difference between persons who obtained reclaiming leases in estates permanently settled in 1793, and similar lessees in other estates.

§ 18. In considering the position of persons of the class described in the preceding paragraphs, it is important to point out that there are important differences between persons who obtained reclaiming leases in estates permanently settled in 1793, and persons who have since that time obtained similar leases in estates either permanently settled under more modern rules, or still the subject of temporary settlements. The settlement of 1793 was based on the assessment of the land then in cultivation, and the possible receipts from land then waste, but which might afterwards be brought under cultivation, were not taken into account. Indeed, the reclamation of this waste land, which in 1793 was computed to form one-third, or (according to others) one-half, or even more of the whole area of Bengal, was expressly pointed out to the zemindars as a source of future increase of income. The waste land being thus, as it were, held free of revenue by the zemindars—seeing that the amount of revenue payable by them depended upon the *then* cultivated lands and would be in no way affected by the waste being cultivated or not cultivated—they naturally did not take much account of Government revenue in granting reclaiming leases. All the rent that they obtained by such grants was clear gain, subject to no deductions. Naturally they could afford to give, and they did give, such leases at very favourable rates—rates which left a large and increasing profit to their immediate lessees. The Government subsequently became fully alive to the importance of taking the waste land into account before any estate was permanently settled, and finally it was laid down as a general rule that no estate should be parmanently settled in which the actual cultivation amounted to less than eighty per centum of the culturable area. At the same time Government took into its own hands large tracts of waste land not included within the limits of the permanently settled estates of 1793, and the grant of reclaiming leases in these tracts was regulated by a reasonable regard to the interests of the State, the incidence of the Government revenue being carefully taken into account. When estates not included in the Permanent Settlement of 1793 are now settled, the Government usually takes as reveune seventy per cent. of the gross collections. Allowing ten per centum as collection expenses, there remains twenty per cent. to be divided between the zemindar and the reclaiming lease-holder. In the permanently settled estate of 1793 there is ninety per cent. of the profits to be divided: or even if the Government revenue be distributed over the entire area of the estate, it comes to as little as ten per cent in many places, thus leaving eighty per cent. to be divided.

Effect of the Case-law upon the status of this class.

§ 19. Turning to the case-law we find it decided (1) that if a person takes land and at once sub-lets it, he will be a middleman, and will not under the present law acquire a right of occupancy in such land; (2) that if a ryot, who has acquired a right of occupancy in land sub-lets such land, he does not by so doing forfeit his right of occupancy; but (3) he cannot by so doing alter the nature of his holding and convert it into an under-tenure. Applying these principles, it will appear that the reclaiming lease-holder, who never himself cultivated and who sub-let before he had held for twelve years, never was a ryot with a right of occupancy. He was and is a middleman; but what are the rights of a middleman is not laid down in the law, and must be very uncertain. If such lease-holder reclaimed and cultivated part of his lot and let the rest of it, are his position and his rights different in respect of the two portions? Can he be a ryot with a right of occupancy as to the former portion—unable to put off this character and convert himself into anything else but a ryot—and as to the latter portion, a middleman with undefined rights and liabilities? This uncertain and inconsistent state of the law—built up of isolated cases dealing with individual rights, which were the complement of the rights of other persons not before the court and not therefore duly considered—has led to much profitless litigation, and if allowed to continue must lead to still less satisfactory results. We think it, therefore, very expedient that the rights of the above classes of persons should be defined, and that some rules should be laid down which will enable the courts to say in all cases who are tenure-holders or under-tenure-holders, and who are ryots having a right of occupancy.

No clear line of distinction in the present law between Ryoti Holdings and Tenures or Under-tenures.

§ 20. After the fullest consideration of the whole subject, it appears to us impossible to discover any principle of distinction between ryots and tenure-holders or under-tenure-holders which will hold good universally or even in the large majority of cases. If cultivation be taken as the test whether the interest of a particular tenant is a tenure (or under-tenure) or a ryoti holding, a *talukdar*, tenure-holder or under-tenure-holder may cultivate land forming part of his *taluk*, tenure or under-tenure, while the person commonly called a ryot may have sub-let his entire holding and may not himself cultivate a single square foot. It is impossible, therefore, to say that under all circumstances the person who cultivates is a ryot, and the person who does not cultivate is a tenure-holder. If the receipt of rents from persons in the actual occupation of the land be considered the essence of a tenure-holder or under-tenure-holder, then we find ryots also sub-letting and receiving rents from their tenants in actual occupation. If hereditability be tried, the ryot's interest, the ryot's holding is heritable as well as the *taluk*. Is transferability the test? The ryot's *jama*, independently of Acts X of 1859 and VIII. of 1869, is commonly tranferable by custom. Is saleability for its own arrears set up as the true distinction? The landlord of his own option brings ryots' holdings to sale in execution of decrees for rent, while a tenure or under-tenure is not subject to the special law for the sale of under-tenures for the recovery of arrears of rent due in respect thereof, unless it is so saleable by the title deeds or established usage of the country. If the quantity of rent paid by the tenant be supposed to be the point of distinction, then in Rungpore the rent of a jote varies from one rupee to half a lakh of rupees, while in other districts the rent of many *taluks* is but a few rupees. It is true that a tenure-holder or under-tenure-holder is not liable to enhancement upon the grounds applicable to a ryot having a right of occupancy; but this distinction stops here, for the existing law does not define the grounds upon which the rent of a tenure or under-tenure can be enhanced.

Quantity of land included in a singledemise selected as the ground of distinction between Ryoti Holdings and Tenures or Under-tenures.

§ 21. Under these circumstances we have come to the conclusion that the quantity of land included in a single demise will afford the most reasonable ground of distinction in the case of the class of tenants under discussion. Although at the present time, and under the altered condition of agricultural society, actual cultivation is no longer the essence of a *ryoti* tenure, we think that the original conception of a "ryot" was that he entered on the land for the purpose of cultivating it or bringing it under cultivation, either by his own personal labour, or by that of his servants or followers, or by means of persons who would occupy portions of the land, giving him in return a share of the produce according to the custom of the country, and afterwards a money rent when it suited both parties to make this arrangement. A *ryoti* holding being created in this manner, it did not cease to be such because the ryot subsequently sub-let (there being nothing either in his contract or in the custom of the country to prevent him from doing so), and practically converted himself into a middleman, which is only another name for a tenure-holder or under-tenure-holder. This process of conversion is going on, and has long been going on, in every district of Bengal. That, while undergoing this process, there should be some doubt as to how far the tenant was to be governed by the incidents of the *ryoti* condition which he is leaving, or by those of the tenure condition to which he is approaching, is only natural. It is not possible so to adapt legislation as to make exact provision for this transition state: but looking at what we take to be the true conception of a ryot, and finding it impossible to ignore the custom of sub-letting, we think it reasonable to say that, whether a tenant subsequently sub-lets the whole or part of the land demised to him, it is not easy to presume that he had any intention of assuming the position and status of a ryot, if the quantity of land included in the original demise was so large that it could not be cultivated by a single tenant with such means and assistance as are usual in the country.

Person to whom more than 100 bighas let by one demise to be a Tenure-holder or Under-tenure-holder.

§ 22. We have therefore enacted (section 11) that, notwithstanding any custom or contract to the contrary, every person to whom more than one hundred standard bighas of land have been let by a single demise, otherwise than for a term or year by year, shall be deemed to be a tenure-holder or under-tenure-holder within the meaning of sections 8, 9 and 10. If the lessor were a proprietor, the lessee will be a tenure-holder; if the lessor were a tenure-holder or under-tenure-holder, the lessee will be an under-tenure-holder of the first, second degree, and so on. We have made possession necessary to complete the demise in order to avoid the risk of litigation, which, in this country, is so common when persons, out of possession but relying on titles that have to be established in courts of law before they can be enforced, grant leases to persons who are prepared to speculate in law-suits. We have made these provisions applicable to tenancies created as well before as after the commencement of the Act. We have further declared that every such tenure or under-tenure, which has been held for twelve years, shall be permanent and transferable. The quantity of land selected for the purposes of these provisions is, of course, an arbitrary quantity; but we think it reasonable to draw the line at one hundred bighas, having regard to what has been said above. It may be well to observe that, although the person who holds more than one hundred bighas is made a tenure-holder (or under-tenure-holder), whether he or his landlord wishes it or not, the person who holds one hundred bighas or less may be a tenure-holder or a ryot, as he and his landlord wish and agree.

Provisions of Chapter I. as to Tenure-

§ 23. We must content ourselves at this stage with stating the rule which we propose to apply for distributing tenants such as those whom we have holders and Under-tenure-holders.

Those who have held a fixed rent not changed since Permanent Settlement, not liable to enhancement.

described under the heads of ryots and tenure-holders or under-tenure-holders. The effect of this rule cannot be clearly shown or fully understood until we have explained the sections of the Bill which deal with the position and define the rights of ryots, and to these we shall come presently in due course after noticing the provisions of Chapter I., which deals with tenure-holders and under-tenure-holders. The present law provides that *no dependent talukdar or other person, possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the ryot*, who holds his taluk or tenure, otherwise than under a terminable lease, at a fixed rent which has not been changed from the time of the Permanent Settlement, shall be liable to enhancement of such rent, anything in section 51 of Regulation VIII of 1793, or in any other law, to the contrary notwithstanding. We have retained these provisions, substituting the words "tenure-holder or under-tenure-holder" for the words above italicised. We have further made it clear that the Permanent Settlement intended is in all cases that of Bengal, Behar and Orissa made in 1793, and not, as regards any district or area subsequently settled, the Permanent Settlement of such district or area.

Presumption of holding at fixed rent since time of Permanent Settlement from evidence of holding at such fixed rent for twenty years.

§ 24. We have also retained the presumption provided by the existing law that when the rent of a tenure[1] is proved not to have been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such tenure has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period. It has been decided that this presumption may be rebutted by evidence of the creation of the tenure at some period subsequent to the Permanent Settlement, and we have introduced words to this effect into the section of the Bill. It has been pressed upon us that this presumption bears very hardly upon zemindars; that if a tenure-holder succeeds in proving payment of rent for twenty years at the same rate, it is very difficult, if not impossible, for his landlord to rebut the presumption which upon this is raised by the Act; that it thus becomes dangerous to allow tenure-holders to remain undisturbed paying the same rent for twenty years; and that zemindars are in consequence forced into litigation, lest their rights should pass away *sub silentio*. We have considered these arguments, and they have failed to convince the majority of us that a case has been made out for altering the law, especially now that more than twenty years have elapsed since the statutory presumption was created. If the law were now changed, the change would destroy titles which have become perfected by the presumption. The zemindar has it in his own power, by preserving a proper record of transactions affecting tenures not entitled to the benefit given by the presumption, to prevent prejudice to his own interests in the future. Looking at the question from another point of view, it is very much more difficult for a tenure-holder to prove a title from the time of the Permanent Settlement, than for the zemindar to prove that the tenure was created, or the rent fixed at a later period, or that the rent has been changed on one or more occasions since the Permanent Settlement. We have made one exception to the general operation of the presumption, that is to say, in the case of tenures in an estate *not permanently settled*. We have provided that these shall not be protected upon the expiry of a temporary settlement, unless the right to hold them for ever at a fixed rate of rent has been expressly recognized in settlement proceedings by a Revenue authority empowered by Government to make definitively or confirm settlements.

Exception in the case of tenures in estates not permanently settled.

Section 51 of Regulation VIII of 1793. Dependent Taluks held from time of Permanent Settlement protected from enhancement save in special cases.

§ 25. We have retained the provisions of section 51 of Regulation VIII of 1793, namely, that a dependent talukdar who has held his *taluk* since the time of the Permanent Settlement is not liable to enhancement, except upon proving (1) that the proprietor under whom he holds is entitled to enhance either (*a*) by the special custom of the district, or (*b*) by the conditions under which the *taluk* is held; or (2) that the *talukdar*, by receiving abatements from his rent, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it; but we have extended these provisions to tenures and under-tenures, and have added two *explanations*.

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[1] In the paragraphs that follow *tenures* only will be spoken of in discussing what applies to *tenures* and *under-tenures* alike. When there is any difference in the law applicable to *under-tenures*, it will be specially noticed.

The number of tenures or under-tenures, which can now be affected by these provisions and which have not fallen within the protection of the law explained in the two previous paragraphs, is probably very small. The first explanation, taken from a decided case, is that in order to entitle to the benefit of the section it is sufficient to show that a tenure was in existence at the time of the Permanent Settlement, and could have been registered in the Collector's office, even though it was not actually registered. The second explanation is that an abatement of rent granted for land taken under the provisions of *The Land Acquisition Act*, 1870, is not an abatement within the meaning of the section, or, in other words, that the fact of having received such an abatement will not render a tenure-holder liable to enhancement of rent. We shall notice other points connected with the enhancement of rents of tenures when we come to discuss the general question of enhancement.

Permanent tenures and under-tenures declared heritable, devisable, transferable, &c.

§ 26. We have enacted that all permanent tenures shall be heritable, devisable, capable of being transferred by sale, gift or otherwise at the discretion of the holder, answerable for his personal debts, and subject to the process of the civil courts. We have here merely stated what we believe to be in accordance with the accepted usage of the country. We have included in the Chapter which treats of tenures so much of the old Regulation VIII. of 1819 as relates to the legal incidents of a *patni taluk*. We have here made no change, but we have expressly declared a *patni taluk* to be devisable, in order to obviate any doubt which might arise upon this new enunciation of the old law.

Law as to Ryots entitled to hold at Fixed Rates, reproduced without material alteration.

§ 27. Chapter II. of the Draft Bill is concerned with ryots who are entitled to hold lands at fixed rates of rent. We have here reproduced, without any very material alteration, the existing law, which is closely analogous to the law applicable to tenure-holders who have held since the time of the Permanent Settlement, making it clear here also that what is intended is the Permanent Settlement of 1793. We have added a few explanations, which embody the result of decided cases, declaring, in the first place, that when rent is payable in kind, a fixed proportion of the produce is a fixed rate within the meaning of the law; and, in the second place, that the operation of the rule as to holding at a fixed rate is not affected by the fact of the land having been demised to different persons, or transferred, or separated from other land which with it formed a single holding, or amalgamated with other land into one holding, so long as the rate of rent has not been altered by any of these transactions. The observations made above in § 24 as to the twenty years' presumption are applicable to the case of this class also. We have further provided, in accordance with the decided case, that this presumption may be made even though the ryot do not plead in express terms that the land has been held from the time of the Permanent Settlement at a rent which has not been changed since that time, if only there is nothing in his statements inconsistent with its having been so held. We have here also made an exception similar to that explained above in § 24 to meet the case of lands in temporarily settled estates.

A Right of Occupancy in land how acquired.

Trespasser cannot acquire.

Actual cultivation not necessary to its acquisition.

§ 28. We now come to Chapter III., which treats of *ryots who have acquired a right of occupancy*. We have provided (section 19) that subject to the provisions of section 11 (see above § 22), any ryot who for a continuous period of twelve years has as a tenant held, or has as a tenant occupied and cultivated, land, and paid rent for the same, has a right of occupancy in such land. The words "as a tenant" have been introduced to show that holding or occupation as a trespasser will not create the right. We have seriously considered whether the acquisition of a right of occupancy should not be limited in all cases to the actual cultivator of the soil. Having examined the subject in all its bearings, we have come to the conclusion that such a rule, if laid down, would exercise a disturbing influence, the immediate benefit to be derived from which appears doubtful to some of us, and the ultimate consequences of which none of us can pretend to forecast with any reasonable certainty. If all *korfas* or under-ryots were converted into ryots having or able to acquire a right of occupancy, some of us think that the rate of rent for occupancy ryots would be forced up to such a point that a right of occupancy would be valueless, as it would become necessary to convert the superior ryot into a tenure-holder or under-tenure-holder, and to take the present *korfa* rates of rent as the measure of the rates to be hereafter payable by the occupancy ryot. We have therefore decided to make no material change in this respect in the present law, which gives the right of occupancy to a ryot who "cultivates" or "holds," merely substituting for "cultivates" the more precise expression "occupies and cultivates." The term "holds" will, of course, include, as now, a ryot who has sub-let in *bhagjote* or otherwise. We may observe that the law, as thus expressed, is in harmony with what we have stated to be our conception of the term "ryot" (*ante* § 21).

Ryot must continue to pay rent, as well as hold or occupy.

Calculation of time when same ryot has not held or occupied during the whole twelve years.

Right of occupancy may be acquired under landlord who has no title, or who is a coparcener.

§ 29. We have made it necessary that the ryot should continue to pay the rent, as well as to hold or occupy the land. This appears to us to be just and fair; and it follows the rule laid down by the Privy Council in the somewhat analogous case of land which is wholly submerged by a river, the property in which will continue to belong to the former proprietor, if he continues to pay revenue therefor, so that he will be entitled to land formed again on the same site. We have followed the present law in providing that in the computation of the twelve years, the time during which his father or any other person, *from whom a ryot has inherited*, has held the land may be added to the time during which the ryot has himself held; but that, in the case of a *transfer otherwise than by inheritance* before the completion of the twelve years, whether with or without the consent of the landlord, the time during which the transferor has held may not be added to the time during which the transferee has held, unless the landlord has expressly consented in writing that it shall be so added. According to the decisions the two periods cannot be added together to make up the period of twelve years. We have modified this by saying that they may be added when the landlord expressly consents in writing. Following the Case-law, we have provided that a ryot is not precluded from acquiring a right of occupancy by the fact that the landlord under whom he has held for the whole or part of the twelve years had no title, or by the fact that such landlord was a coparcener.

Cases of possible doubt in which it is expressly declared that a right of occupancy shall be acquired.

§ 30. In order to obviate doubts that may arise, and some of which have arisen, upon the present law, we have expressly declared by way of explanation that a right of occupancy may be acquired (1) by a person holding immediately under a *mukarraridar* or *istemrardar;* (2) by a person holding immediately under the tenure-holder created by the Act (section 11) when more than one hundred bighas have been let under a single demise; (3) by a person occupying land immediately under a ryot having a right of occupancy, when the land is held *otherwise than for a term or year by year;* and (4) by a person occupying *khamar, nijjote, or sir* land immediately under a proprietor, when such land is held *otherwise than for a term, or year by year.* The first of these four cases is new; a majority of us think that the interest of a *mukarraridar* or *istemrardar* so far partakes of the nature of a tenure that the person holding immediately under him should be allowed to acquire a right of occupancy. The second case is necessary to complete the status of what we may call the "statutory tenure-holder." The third and fourth cases merely follow the existing law as interpreted by the courts.

Cases in which a right of occupancy cannot be acquired.

§ 31. We have also thought it expedient to state by way of explanation certain cases in which a right of occupancy cannot be acquired. A proprietor, tenure-holder, under-tenure-holder, *mukarraridar*, *istemrardar*, or *ijarahdar* cannot acquire a right of occupancy in land which forms a portion of his estate, tenure, under-tenure, *mukarrari* holding, *istemrari* holding, or *ijarah*, respectively. Although an *ijarahdar* cannot, as such, acquire a right of occupancy in land included in his *ijarh*, yet he will not lose a right of occupancy previously acquired in land, merely because such land is included in a subsequent *ijarah*. A right of occupancy cannot be acquired in land held for a term, or year by year, under an occupancy ryot, or in *khamar nijjote*, or *sir* land held for a term, or year by year, under a proprietor. Finally, a tenant may not acquire a right of occupancy, if at the time of being first let into possession he have made with his landlord a written and registered contract that no such right shall be acquired. As to this last case, we may observe that although we think it inadvisable to prevent parties altogether from contracting themselves out of the operation of the Act, we think it desirable to require in all cases the clearest evidence of their intention to do so.

Legal incidents of a right of occupancy.

§ 32. We have defined (section 20) the legal incidents of a right of occupancy, and first of all we have declared it to be transferable by private sale or gift, and devisable by will; and we have enacted that the consent of the land-

Transferability.

Occupancy holding may not be mortgaged.

lord shall not be necessary to the validity of any such transfer or devise, it is not necessary to recapitulate here the arguments for and against transferability which have been fully stated in the Appendix to the Digest. We think it sufficient to say that, having carefully considered these arguments, a majority of us are in favour of transferability. But, although we allow the ryot to sell his holding, we prohibit him from mortgaging it. We think that this will most effectually prevent the ryot and his holding from falling into the hands of the *mahajan;* and that the danger, which some persons apprehend, of *mahajans* becoming the owners of occupancy holdings, while the *quondam* ryots will remain on the land in a degraded condition of serfage, will thus, to a considerable extent, be obviated. We believe that a ryot, whom no persuasion will induce to sell his land, can very easily be led to borrow a few rupees upon the security of it for a wedding or a *sradh,* or for some purpose of emergency. A bad season, sickness, or not uncommonly his own improvidence, prevents him from repaying the loan, which is rapidly swelled by interest. He thus gets more and more into the *mahajan's* hands, and the hope of extricating himself and recovering his position finally disappears altogether, the result being that the *mahajan* gets a decree, brings the holding to sale, and purchases it himself for much less than its real value.[1] A *mahajan,* who will readily lend a little money on a ryot's holding in the hope of ultimately realizing a very considerable profit by foreclosing his mortgage, will have no desire to purchase the same holding at anything like a reasonable price with the intention of becoming a capitalist farmer. In order to render effectual the prohibition against mortgaging, we have enacted that any such mortgage shall be void to all intents and purposes, and that no court of justice shall take cognizance thereof, or give effect thereto in any judicial proceeding whatever (section 20, clause (*d*): and we have further enacted that a right of occupancy, though saleable in execution of a decree for its own rent, shall not be saleable in execution of any other decree (section 20, clause (*a*)).

Occupancy holding heritable according to the law of inheritance of the ryot:

Lapses to landlord on death of ryot without heirs.

§ 33. We have declared that a right of occupancy shall be heritable according to the law of inheritance to which the tenant is subject, but that no division of the holding or of the rent shall be made so as to be binding on the landlord without his written consent (section 20, clause (*c*)). This is merely an authoritative enunciation of what is accepted as customary law. When a ryot who has a right of occupancy dies, leaving no heirs and having made no will, we have enacted that the landlord shall be entitled to take possession of the land. This also is in accordance with the present practice.

Ryot may not be ejected from occupancy holding for non-payment of rent or other cause.

Forfeiture for breach of conditions of lease.

§ 34. As an occupancy holding has been made transferable and saleable in execution of a decree for its own rent, the necessary consequence is that a ryot ought no longer to be ejected from such a holding for non-payment of rent. We have accordingly enacted (section 20, clause (*e*)) that no ryot may be ejected from land in which he has a right of occupancy, whether for non-payment of rent, or other cause not being a breach of a stipulation in respect of which such ryot and his landlord have contracted in writing that the ryot shall be liable to ejectment for a breach thereof. When a ryot is ejected on account of a breach of any such stipulation, we have provided that he shall be entitled to compensation for improvements under certain provisions which will be noticed hereafter. Mr. O'Kinealy is strongly opposed to forfeiture for breach of the conditions of a lease, and would allow equitable relief in all cases in which the landlord is not actually endamaged, or the security for his rent impaired. Courts of equity have always regarded conditions for forfeiture with disfavour, proceeding on the principle that they are intended to secure the payment of the rent and to prevent injury to the landlord's reversion; that while the landlord is entitled to avail himself of his legal right to effectuate these ends, he ought not to be permitted to go further and use it for purposes of oppression or harsh or vindictive injury. Mr. Field so far agrees with Mr. O'Kinealy as to think that the point ought to be considered if the Bill comes before the Legislature in its present shape.

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[1] Because the sale is held at a distant court-house and not on the spot, where the value of the holding is known, and because persons are unwilling to compete with the man of money, who has a lien on the holding. If the provision of the last Code of Civil Procedure, which forbids the decree-holder to bid without the special leave of the court, were so applied in these cases as to make it the *mahajan's* interest that outsiders should bid, there is little reason to doubt that better prices would be realised.

Rent payable in kind not to be more than half the gross produce in the case of staple crops;

Rule in case of special crops.

§ 35. We have enacted (section 21), in accordance with the opinion of the majority, that when the rent payable by a ryot for an occupancy holding is paid in kind, and the ryot receives no assistance from his landlord towards producing the crop, such rent shall not exceed fifty per centum of the gross produce in the case of staple crops; that in the case of special crops, if the landlord and tenant have contracted in writing for any particular share of the gross produce, such contract may be enforced, but in the absence of any such contract, the landlord shall not be entitled to recover any other or greater rent than twenty-five per centum of the average annual value of the gross produce. These provisions, as drafted, will operate upon existing rents payable in kind so as to reduce them in those cases in which more than half the gross produce is now taken. Mr. Dampier is opposed to any interference with existing rents. In many parts of Behar and elsewhere the landlord now receives nine-sixteenths of the gross produce. Mr. Dampier and Baboo Pyari Mohun Mukherji consider this proportion to be so well-known and so prevalent that it should not be altered by the Bill, at least so far as concerns existing tenancies. It appears to the other members of the Commission that one-half the gross produce is the very largest portion that a landlord should be allowed to take; and they regard the impoverished condition of the ryots, from whom more has been taken, as a strong argument for putting in force a rule which should have been suggested to landlords by that moderation and forbearance which were made express conditions of the Permanent Settlement. Mr. O'Kinealy would limit the maximum rent payable in kind by an occupancy ryot to 40 per cent., or two-fifths of the gross produce.

Points of distinction according to the Bill between tenures or under-tenure and occupancy holdings.

§ 36. The distinction between tenure-holders and ryots in the present law is not very clear or very well marked, as we have had occasion to remark. We have, we hope, made it somewhat clearer and better marked in the Draft Bill. We are satisfied that it would not be possible to demarcate exactly the boundaries between these two interests without the risk of injury to vested rights, and possibly the further risk of making greater confusion than that which we have sought to remove. It may, however, be useful to point out certain points of distinction which arise upon the sections of the Bill in their present form. (1)—An occupancy holding may not exceed one hundred bighas in size: a larger area becomes a tenure or under-tenure by the operation of section 11. A tenure or under-tenure may be of any size. (2)—When there is no occupancy right previously existing, a right of occupancy is acquired by holding, or by occupying and cultivating. The law is silent as to the acquisition of such a right by contract. A tenure or under-tenure can be acquired by contract, and this is the usual mode. It may also be acquired by holding for twelve years, but only in the case of land exceeding one hundred bighas in area and let otherwise than for a term, or year by year. (3)—Both the tenure-holder or under-tenure holder and the occupancy ryot can sub-let. In the absence of a registered contract to the contrary, the under-tenant in all cases acquires a right of occupancy against the former; but against the latter he acquires such right only when the land is sub-let otherwise than for a term, or year by year. (4)—Both can sub-let, but the rents of the under-tenants of the tenure-holder or under-tenure-holder cannot be enhanced so as to exceed *twenty-five* per cent. of the average annual value of the gross produce, while the rents of the under-tenants of the occupancy ryot may be raised to any amount which they will pay and not give up the land, or, if such under-tenants have acquired a right of occupancy to *thirty* per cent. of such average annual value (section 23, clause (*c*)). (5)—The rents of both the tenure-holder (or under-tenure-holder) and the occupancy ryot may be enhanced, but the grounds and limits of enhancement are different. (6,—Both may cultivate, but the tenure-holder or under-tenure-holder acquires no right of occupancy by his cultivating. (7)—Both interests are heritable, but if the tenure-holder dies without heirs, his tenure escheats to Government, while, if the occupancy ryot dies without heirs, his landlord can resume the land. (8)—A tenure or under-tenure can be taken in execution for any debt. An occupancy holding can be sold in execution only of a decree for arrears of its own rent.

Enhancement of rent the most difficult question for consider-

§ 37. By far the most difficult question presented for our consideration in preparing an amended law of landlord and tenant for these Provinces is that of the enhancement of rent. As soon as the Legislature recognized a right ation: how this question has become a necessary one.

on the part of any class of tenants to be protected against arbitrary eviction by their landlords, it became absolutely necessary to provide by legislation some means whereby the rents payable by such tenants may be settled and determined. It has been contended by some very able authorities that the only safe means of settling rents is by the unfettered action of the principle of competition, and that any attempt on the part of the Legislature to set aside this principle and substitute for it any other principle, must be mischievious in its consequences to the community concerned. It is no part of our present duty to examine what general truth there may be in this contention as applied to those countries, whence have been derived the data upon which the existing system of Western political economy is based; but that this contention should not be accepted as applicable to the state of things in this country, and should not be allowed to influence our legislation upon the subject in hand, we entertain no doubt. In order to make the reasons for this opinion more easily intelligible, it is necessary to consider what rents is in these Provinces, and this is a subject of some difficulty, owing in part to the inherent ambiguity of language, when the same term is applied to several things, the substance of which depends upon different conditions.

Different theories of rent. The Ricardo theory.

§ 38. The theory of rent, first put forward at the close of the last century and revived some twenty years later by eminent political economists, is that *rent is what land yields in excess of the ordinary profits of stock.* It is assumed that no land will be cultivated which will not yield the ordinary profit derivable from capital employed in other undertakings. If land yields less than this, capital will not be employed in cultivating it; if it yields more, the excess will be appropriated by the owner of the land, who will otherwise withhold the use of this natural agent. As the prices of produce rise, the profits from capital employed in agriculture increase. Land which in one year yields no excess over and above the ordinary profits of capital, may in the following year yield some excess, and so pay rent. Of all the land in cultivation that which is yielding no excess must necessarily be the worst, *i. e.*, as regards inferiority of soil or situation, or proximity to markets, or facility of communication, &c. When such worst land begins to yield an excess, to pay a rent, land of a still inferior class will be cultivated and will then be the worst land in cultivation, superseding what has just commenced to pay rent. Thus, the worst land for the time being under cultivation is the standard for estimating the amount of rent which will be yielded by all other land that pays rent. This theory presupposes capital, presupposes capitalist farming conducted with an immediate view to obtaining from capital invested in agriculture the ordinary rate of profit afforded by capital invested in other undertakings. It depends upon certain laws respecting profits, wages, prices, which, as one of the greatest political economists has pointed out, are true only so far as profits, wages and prices are regulated by competition—only so far as the persons concerned are free from the influence of any other motives than those arising from the general circumstances of the case, and are guided as to those by the ordinary mercantile estimate of profit and loss. There are in these Provinces no capitalist farmers. We do not include under this denomination persons who have embarked capital in producing for export silk, indigo, tea, or similar articles other than food. There is little or no capital employed in agriculture, unless we include under this term the commonest agricultural implements, the seed grain necessary to produce the next year's crop, the food necessary for the cultivator's subsistence till the next harvest, and it may be, a small stock laid by against the year of famine that is sure to come round in the cycle of seasons. The immediate object of cultivation is subistence, not profit on capital. There is no wages fund; there are no labourers paid from capital. There are practically no manufactures, no non-agricultural industries, no great cities of work where a surplus rural population can find employment. To such a state of things, to a community so circumstanced, the theory of rent propounded by Mr. Ricardo and other political economists of the same school has no application; and any adjustment of the relations between landlords and tenants in these Provinces, based upon this theory, must, we apprehend, involve serious risk of error.

Theory of rent propounded

§ 39. A more modern school of political economists, dissatisfied with the previous theory, would discard all reference to degrees of productiveness, would by the more modern political economists.

abolish the standard obtainable from the worst land under cultivation, as being misleading and practically useless to inform a disputing landlord and his tenants how much rent exactly each holding should pay; and would define rent simply as surplus profit,—that is, *the excess of profit after the re-payment of the whole cost of production, beyond the legitimate profit, which belongs to the tenant as a manufacturer of agricultural produce.* According to their analysis no landlord or tenant ever thinks of, or enquires after, the worst land under cultivation and which pays no rent, in order to ascertain what is the proper rent for any other land. But an intelligent tenant about to take land will carefully endeavour to inform himself, 1*st*, as to the quantity and quality of the produce that he can fairly reckon on obtaining from the land; 2*nd*, as to the expenditure necessary to raise this produce; and 3*rd*, as to the price which this produce will realize when raised. In order to ascertain the *first* particular, he will consider the quality of the soil, the climate, the water-supply, the possibility of improvement by manuring or other means, &c. To inform himself on the *second* point, he will see if the soil is light and friable or heavy and stiff, and so on—whether his plough will require two horses or four, whether the manure necessary to good cultivation is to be had in the vicinity or must be brought from a distance, what is the rate of wages for local labour, &c. With respect to the *third* item, he will inquire as to the best neighbouring markets and the prices usually there current, and he will have to consider the distance of the land from the market and the cost of conveying the produce from the fields where it is grown to the mart where it can be sold. Having ascertained all these particulars, the intending tenant will be in a position to calculate the balance of profit which he may expect to have left to him after defraying the cost of cultivation, and this will determine the rent which he can pay for the use of the land. Thus rent depends upon the prices realized by agricultural produce compared with the cost of its production; or, in other words, rent exists because a selling price is found, which yields a surplus, an excess of profit beyond what the tanant requires. This theory is a very much more practical one than the former one, but it also proceeds upon the supposition that capital is employed, that money wages of labour are paid, that the produce is converted into money, that an account is kept of outgoings and incomings, and an accurate balance struck. It can have no proper application where all these circumstances do not exist.

Conditions to which any theory of rent must be adapted in India.

§ 40. Let us now see what is the state of things in this country, what are the conditions to which any possible theory of rent must be fitted in order to make it suitable to the people. We know that according to ancient and established usage the dues of Government from the land in India have from time immemorial consisted of a certain proportion of the annual produce of every *bigha*. Such was the rule in the time of the old Hindú Rajas, when Government in all or most cases collected these dues directed from the cultivators. The Mahomedan Government retained this rule with some modifications of detail in carrying it into effect. If is not very material whether the proportion of the produce so taken by the State be called rent, or revenue, or a tax; nor is it necessary to our present purpose to determine whether the property in the soil belonged to the State, or to the cultivators, or in coparcenary to both. Once land was cleared and brought completely under cultivation, this proportion of the produce was taken in every case. The ryots cultivated for subsistence, not with any immediate view to profit. Whether more land should be taken into cultivation depended, not upon whether profits had risen, but upon whether the land already in cultivation was sufficient to raise food for the people. The State demand in no way depended upon profits, and was in no way regulated by any calculation of the total value of the produce and the cost of producing it. The proportion taken by the Government was determined by the Government itself; and, as the ryots were well off or the reverse, according as Government took less or more, and left them more or less, the well-being and comfort of the people depended upon arbitary discretion exercised with despotic power. We know from history that while the earlier Hindu Rajas took only one-sixth, as much as a half was taken in later times; and discretion continuing to be the measure of exaction, the very barest subsistence was in some places and on some occasions left to the cultivators of the soil. If any calculation was made for the purpose of fixing the Government demand, it was too often a calculation of what was the least that could be left to the cultivators to enable them to live and produce the next crop. There are some who think that "custom", even in those days, and in the absence of law authoritatively promulgated by a Legislative Department of the State, regulated the share of the produce taken from the ryots; but it has been well remarked that custom might equally well be pleaded in justification of every species of exaction and oppression.[1] Our predecessors in fact (to quote the language of the Board of Commissioners of 1818[2]) do not seem to have admitted as a principle any other general limit to the Government demand than the amount which the cultivators could afford to pay, and the established Government share too often exceeded this limit.

The Mahomedan system.

§ 41. Mahomedan law recognized only two persons as having an interest in the soil, namely, the Government and the cultivator. There can be no doubt that the cultivators had rights in the land. What exactly these rights were has been warmly disputed; and we shall not attempt to define them or fix their limits. The ryots cultivated the land and paid *khiraj* to Government. This *khiraj* was a share, a proportion of the produce, which was paid either in kind or in the money which represented its commuted value which the Government itself fixed. As long as the *khiraj* was paid, the cultivators were left in possession of the land, though this possession as well as all the other terms of the relation depended upon the will of a despotic ruler. Failure to pay the *khiraj* had for its consequences punishment and the loss of all rights in the land. Such is the general outline of the relation between the two parties having an interest in the soil. Any attempt to express it in terms taken from a wholly different system of interests or rights, and embodying different collections of ideas, must fail to convey an accurate conception of the Mahomedan system, and may be misleading. If it be asked—Is *khiraj* rent, or does it include rent, the answer must be in the negative, if by the term "rent" is meant rent according to either of the theories of rent propounded by European political economists. It was no part of the Mahomedan system that any person should stand between the Government and the actual cultivators and intercept a portion of the *khiraj* paid by the latter: but partly from the difficulty, if not impossibility, of collecting the whole of the *khiraj* by State agency, when the boundaries of the Empire were enlarged by conquest; partly from the fact that in some of the conquered Provinces persons were found in possession of various rights superior to the cultivators, and it was difficult to get rid of these persons, while their services and local experience could well be utilized for the collection of the *khiraj*; and partly from other causes which it is not here necessary to detail,—there sprang up a middle class intermediate between the State and the cultivators, and who as contractors or farmers or having some pre-existent rights which the Mahomedan Government did not care to investigate or define, collected the *khiraj* of large tracts from the cultivators and paid it to Government. Being placed in a position of advantage,[3] the members of this middle class grew rapidly into importance, and in the decadence of the Mahomedan empire acquired considerable power. While using the whole authority of the State to exact by way of *khiraj* all that could be got from the cultivators, they use their utmost ingenuity to keep as much of this as they could for themselves, and send as little of it as possible to the Government treasury.

State of things how modified by the policy of the English Government.

§ 42. Such was the condition of affairs to which the East India Company succeeded; and one of the first problems presented to the new English Government for solution was the settlement and definition of the rights of this middle class. How this great question was debated, how it was determined by declaring the *zemindars* who composed this class to be proprietors, and how the wisdom of this determination has ever since been questioned, are now portions of the constitutional history of the Anglo-Indian Empire. The zemindars, being thus confirmed in their position, continued to collect the *khiraj* from the cultivators and pay it over to the State. The terms of the settlement and the influence of English ideas worked, however, some important changes. In the first place the Government limited and fixed for ever the amount of *khiraj* which it was to demand at the hands of the zemindars. The zemindars being declared to be "proprietors of the soil", "landholders", "landowners", it followed as a natural consequence from this and from the introduction of English ideas that the ryots have come to be looked upon as their tenants; the payments made to them by the ryots in kind or in money came to be regarded as rent, and the payments made by the zemindars to the Government were termed revenue. When the governing race, with whom rested the executive power and the administration of justice, approached the subject of the relation of zemindars and ryots with those ideas of the English law of landlord and tenant formulated in the Regulations and present to their minds, the result, almost inevitable, was that the former state of things underwent considerable change.[1]

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[1] See Lord Cornwallis' Minute of the 11th February 1793; and paragraph 31 of the Revenue despatch of the 15th January 1819.

[2] See paragraph 317 of the Report, dated 27th October 1818.

[3] This must not be understood to convey the idea that all these persons were *novi homines*. Many of them were *Rajas*, or otherwise men of position and family before the Mahomedan conquest.

Ryots had rights at the time of the Permanent Settlement, although they were not then fully ascertained or defined.

§ 43. That at the time of the Permanent Settlement the ryots had rights was admitted then and has never since been denied, at least by persons possessed of information on the subject. These rights were, however, very uncertain and indefinite.[2] That they were so, is not surprising when we reflect upon the arbitrary nature of the preceding Government upon the want of exact rules of law, and the non-existence of a trained judiciary proceeding by fixed methods of enquiry and determination. The Government of 1793 were unable to ascertain and define these rights fully and accurately. The most able members of that Government felt and expressed their inability to do so with the means of information then at their deposal.[3] They were also apprehensive lest enquiries into these rights should excite suspicion in the minds of the zemindars that the assessment of the revenue was not really meant to be permanent:[4] and they indulged a strong hope that zemindars and ryots would, like landlords and tenants in England, adjust all matters in dispute between them by contract.

And these rights were expressly saved.

But, although the Government of 1793 did not then fully ascertain and define the rights of the ryots, it saved these rights in express terms, and reserved to itself the power to ascertain and settle them at any future time at which it saw fit to do so. The exercise of this power inherent in Government is, of course, in no way dependent upon this express reservation, the value of which consists in its being a deliberate recital and acknowledgment of the existence of such rights at that point of time.

Right to have proportion of produce payable by ryot determined by Government.

§ 44. Whatever difference of opinion there may be as to the other rights which belonged to the ryots in 1793—and at this distance of time it is natural that there should be differences of opinion about what, being then uncertain, was not at the period made definite, and much of the evidence of which has since perished in the lapse of nearly a century—we think that there can be no doubt as to one right, the right, that is, to have the proportion of the produce payable by the ryot determined by Government. Such, beyond dispute, had been the practice of the Hindoo and Mahomedan sovereigns;[6] and the Government of 1793, though it created the zemindars "proprietors," using a term which seemed to convey the absolute disposing power of an English landlord, never intended to destroy this right or to abdicate the function cast upon it by the ancient law of the country.[1] The existence of any rights of possession in the ryots would have been incompatible with an arbitrary power in the zemindars to fix the rents; and thus both the necessity of the thing and the ancient law of the land required that this power should be exercised by the Government.

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[1] To show the influence of English ideas, we may refer to Mr. Shore, whose view of the position was so clear and able. Although he "admitted, on the ground of precedent, the right of the Government to interfere in regulating the assessment upon the ryots", he objected "to the policy and propriety of this interference without evident necessity". "The regulation of the rents of the ryots", he observed, "is properly a transaction between the zemindar or landlord and his tenants, and not of the Government; and the detail attending it is so minute as to baffle the skill of any man not well versed in it"—*Minute of the 18th June* 1789, para. 433.

[2] "With respect to the ryots, their rights appear very uncertain and indefinite.—*Mr. Shore's Minute* of the 18th June 1789, para. 388.

[3] See the Minute of the Earl of Moira, dated 21st September 1815, paras. 143-144.

[4] "It may be urged that, unless Government intends to raise the revenues of the lands in future, any further knowledge of the value of them beyond what we at present possess is unnecessary; and to demand the accounts of it would only tend to excite suspicions in the zemindars that the present assessment would not be permanent. The Court of Directors are themselves satisfied upon this point, and discourage the idea of local investigation into the value of the lands, directing that, when the tribute of each zemindar is fixed, he shall remain undisturbed in the administration and enjoyment of his estate, and be assured that as long as he pays his stipulated revenue he shall be subject to no scrutinies or interposition of the officers of Government, unless where a judicial process may become necessary to adjust claims between him and tenants, or talukdars, or partners of the same zemindari".—*Mr. Shore's Minute of 18th June* 1879, para. 473. See also *Revenue letter of 15th January* 1819, para. 31. It may be observed that the Court of Directors in 1819 admitted this to have been a mistake.—*See Revenue letter of 15th January* 1819, para. 38.

[5] First clause of section 8, Reg. I. of 1793: *Revenue letter of 15th January* 1819, para. 39, where it is said—"It is also a circumstance which is not to be overlooked that, although so many years have elapsed since the conclusion of that settlement, yet no resort has been had to the exercise of the power we then expressly reserved of interfering for the purpose of defining and adjusting the rights of the ryots. We conclude that the supposed difficulty or impracticability of the operation was the cause of this non-interference." See also *Revenue letter from Bengal*, dated 17th July 1818, paras. 146-148.

[6] See above § 41. See also *Fifth Report of the Select Committee on the Affairs of the East India Company*, p. 24.—"In point of fact the original amount seems to have been anciently ascertained and fixed by an act of the Sovereign."

Such rents as are payable by the ryots to the zemindars could not properly be left to be settled by competition, and have not been settled by custom.

§ 45. We entertain no doubt that the ryots of 1793 possessed substantial rights: but even if they had no rights whatever, we think that Government could not consistently, with the proper discharge of its functions, leave the settlement of what we shall now call the rents payable by the ryots to the uncontrolled influence of competition.[2] There is in these provinces no capitalist farmer between the landowner and the labourer; the produce of the land is divided between two classes—the landowners and the labourers—the latter sustaining the character of capitalist to the limited extent to which capital enters into the question at all. In such a state of things rents can be settled only by (1) custom, or (2) by competition, or (3) by law. Custom has not as yet settled rents in the Lieutenant-Governorship of Bengal, owing in part to the disturbing influence of our own legislation, especially the Revenue Sale Law; and their settlement cannot be left to the slow operation of a principle which has hitherto failed, and of the future efficacy of which there is no present prospect. Then as to competition, while population is sparse and land is plenty, when the supply of cultivators is limited and the demand for them active, the ryots have the best of the position, and can secure favourable terms. As population increases, the tables are gradually turned, and where cultivation of the soil is the only means of subsistence, the ultimate effect of unrestricted competition must be that the landowners can dictate their own terms to the ryots, who must either accept them or strave.[1] The whole agricultural population are thus reduced to a condition of misery and degradation which must seriously reflect upon the Government under which such a state of things has come to pass. The land of a country belongs to the people of the country: and, while vested rights should be treated with all possible tenderness, no mode of appropriation and cultivation should be permanently allowed by the Ruler, which involves the wretchedness of the great majority of the community, if the alteration or amendment of the law relating to land can by itself, or in conjunction with other measures, obviate or remedy the misfortune.

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[1] "In regard to proprietary right to the land, the recent enquiries had not established the zemindar on the footing of the owner of a landed estate in Europe, who may lease out portions and employ and dismiss labourers at pleasure; but, on the contrary, had exhibited, from him down to the actual cultivator, other inferior landholders styled talukdars and cultivators of different descriptions, whose claim to protection the Government readily recognised, but whose rights were not, under the principles of the present system, so easily reconcileable as to be at once susceptible of reduction to the rules about to be established in perpetuity. These the directors particularly recommended to the consideration of the Government, who in establishing permanent rules were to leave an opening for the introduction of any such in future as from time to time might be found necessary to prevent the ryots being improperly disturbed in their possessions, or subjected to unwarrantable exactions. This, the Directors observed, would be clearly consistent with the true practice of the Mogul Government, under which it was a general maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied; 'and this,' they further observed, necessarily supposes that there were some limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar."—Here follows the passage quoted in the previous Note.—*Fifth Report.*

"We consider it equally a principle interwoven with the constitution of the different Governments of India that the quantum of rent is not to be determined by the arbitrary will of the zemindar."—*Revenue letter from Bengal, dated 7th October* 1815.

[2] The late Mr. John Stuart Mill defined *cottier tenure* as embracing all cases without exception in which the labourer makes his contract for land without the intervention of a capitalist farmer, and in which the conditions of the contract, especially the amount of rent, are determined not by custom but by competition. In a very instructive chapter of his work on Political Economy, in which he draws a parallel between the tenure of land in Ireland and India, he says—"The produce on the cottier system, being divided into two portions, rent and the remuneration of the labourer, the one is evidently determined by the other. The labourer has whatever the landlord does not take; the condition of the labourer depends on the amount of rent. But rent, being regulated by competition, depends upon the relation between the demand for land and the supply of it. The demand for land depends on the number of competitors, and the competitors are the whole rural population. The effect therefore of this tenure is to bring the principle of population to act directly on the land and not, as in England, on capital. Rent in this state of things depends on the proportion between population and land. As the land is a fixed quantity, while population has an unlimited power of increase, unless something checks that increase, the competition for land soon forces up rent to the highest point consistent with keeping the population alive. The effects therefore of cottier tenure depend on the extent to which the capacity of population to increase is controlled, either by custom, by individual prudence, or by starvation and disease."

"It would be an exaggeration to affirm that cottier tenancy is absolutely incompatible with a prosperous condition of the labouring class. If we could suppose it to exist among a people to whom a high standard of comfort was habitual, whose requirements were such that they would not offer a higher rent for land than would leave them an ample subsistence, and whose moderate increase of numbers left no unemployed population to force up rents by competition, save when the increasing produce of the land from increase of skill would enable a higher rent to be paid without inconvenience, the cultivating class might be as well remunerated, might have as large a share of the necessaries and comforts of life on this system of tenure as any other: they would not, however, while their rents were arbitrary, enjoy any of the peculiar advantages which methayers on the Tuscan system derive from their connection with the land: they would neither have the use of a capital belonging to their landlords, nor would the want of this be made up by the intense motives to bodily and mental exertion which act upon the peasant who has a permanent tenure. On the contrary, any increased value given to the land by the exertions of the tenant would have no effect but to raise the rent against himself either the next year or at farthest when his lease expired. The landlords might have justice or good sense enough not to avail themselves of the advantage which competition would give them; and different landlords would do so in different degrees. . . . . The only safeguard against these uncertainties would be the growth of a custom insuring a permanence of tenure in the same occupant without liability to any other increase of rent than might happen to be sanctioned by the general sentiments of the community. . . . .

Theory of rent applicable to Bengal and Behar.

§ 46. Whether, then, the question be examined in the light of the ancient constitutional law of the country, or with reference to the high duty and obligation devolving upon Government to promote the happiness and prosperity of the people, the conclusion is the same, namely, that the ruling power ought to determine the rents payable in these Provinces by the ryots to the zemindars. In this view the appropriate theory of rent is, not that it is the surplus profit of capital applied to agriculture, or that it depends immediately upon, or is regulated by, the profits of capital, but that it is such a proportion of the produce of the soil, deliverable in kind, or payable in money, as the Government may from time to time determine shall be delivered or paid by the cultivators to the zemindars, or those to whom the zemindars have transferred their rights, If it be asked on what principle Government should determine this proportion—what share shall be considered fair and equitable—our answer is—Such a share as shall leave enough to the cultivator of the soil to enable him to carry on the cultivation, to live in reasonable comfort, and to participate, to a reasonable extent, in the progress and improving prosperity of his native land.

In applying this principle, no single standard possible for all parts of these Provinces.

§ 47. When we come to apply this principle to the solution of the question before us, the first reflection that occurs to us is that there is not presented to us a *tabulu rasa* on which we may inscribe a single rule, or set of rules, which shall be of uniform application. The progress of nearly a century has created relations of persons and conditions of things, to sweep away which for the purpose of establishing an ideal normal standard would involve an interference with vested rights and a disturbance of existing associations which would irritate the feelings of those concerned, and render the remedy worse than the disease. Were we to set up any single average standard of comfort for the whole agricultural population of these Provinces, we might find that, while it placed the Behar ryot in a position of ease calculated by

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. . . . When the amount of rent is not limited either by law or custom, a cottier system has the disadvantages of the worst methayer system. . . . . When the habits of the people are such that their increase is never checked but by the impossibility of obtaining a bare support, and when this support can only be obtained from land, all stipulations and agreements respecting the amount of rent are merely nominal. The competition for land makes the tenants undertake to pay more than it is possible they should pay, and when they have paid all they can, more almost always remains due." It would seem to follow that if custom or the habits of the agricultural population are not strong enough in such a community to keep rents within such a limit as will allow a reasonable standard of comfort for the cultivators of the soil, the Legislature ought to impose such a limit: and that, failing this, a state of wretched cottierism must be the result when the pressure of population has reached a certain point.

[1] The difference between Behar and the Eastern Districts of Bengal appears to illustrate remarkably these two stages of competition. At the time of the Permanent Settlement, Government, while declaring its right to do so, forbore to determine the rents payable by the ryots to the zemindars, and, in fact, left them to be settled by the parties themselves as best they could—(See *Revenue letter of the 15th January* 1819, paragraphs 46-54). In Behar the population had come to press closer upon the land than in Eastern Bengal. The landowners accordingly had the advantage in the former Province, and were able to maintain the system of payment in kind and push rents up to a point which leaves the cultivator but a bare subsistence; while in the latter part of the country, unreclaimed land being abundant and cultivators scarce, the ryots had the advantage and were in consequence able to procure land on very favourable terms. Thus, various tenures at low rents came into existence in the Eastern Districts, to which we find nothing similar in Behar. It must not, however, be supposed that these tenures, if rents be left to unrestricted competition, will act as a complete barrier to the normal tendency. The tenure-holders have rapidly become middlemen, and, where population has begun to press on the land, have sub-let. The sub-letting has in many places reached several degrees. It may be that the existence of these intervening interests, which are readily bought and sold, and the possession of which is much coveted, will exercise a healthy influence in creating a better standard of comfort; but, although the condition of things as their present stage appears fair, it is impossible not to dread a decline into cottierism hereafter, especially as there are no checks upon the increase of population. To show that this apprehension is not without foundation, we quote the following passage from a letter of the pleaders of the Rungpore Courts, written in 1876:—

"The demand for land is, indeed, very great, and as the cultivating class is steadily increasing, the competition for obtaining land, and with it the rate of rent, is also on the increase. So strong is the desire for land on the part of this class that they sometimes bid for it at a rate of rent which would leave them no margin for profit. The zemindars, in their turn, do not fail to take advantage of this state of things to increase their revenue."

the sudden change to engender sloth rather than energy, it fell short of the existing requirements of members of the agricultural community in some other parts of the country. The inequalities in existing rents are due to causes which have their roots in the past history of the best part of a century. The density or sparseness of population in different districts; the quantity of unreclaimed land available to meet the requirements of a growing community; the energy of particular landlords; the proximity or distance of courts or Magistrates able to repress this energy, when it exceeded the bounds of law; the force of resistance offered by the ryots, varying widely in different parts of the country; the indolence of other landlords; the frequency of Government management; the irregular incidence of famine; the unequal opening up of the country by railways and roads, in respect of which all districts do not yet enjoy equal facilities; the action of the great rivers—these and other causes have produced imparities, of which we think that account must be taken in any endeavour to settle rents, or the enhancement or rents, by legislation. We are, therefore, all agreed that existing rents should be taken as the basis of operation; in other words, that no attempt should be made to replace these existing rents immediately by any new and uniform standard; and that, apart from the usual and recognized grounds of abatement, there exists no necessity for reducing rents generally in any part of the country. At the same time we think that, in regulating future enhancement, regard may reasonably be had to existing inequalities, and that landlords, who have already benefited more than other landlords by the favourable action of some of the causes above-enumerated, are not entitled to an equal accession of advantage in the future.

No simple uniform rule of enhancement possible.

§ 48. This brings us to the important question—Can a simple uniform rule be laid down for enhancement? We think this question must be answered in the negative. The subject has been fully considered by able and practical minds upon more than a single occasion; and none of these deliberations has produced any simple, practicable rule which, applied to all conditions and under all circumstances, will afford satisfactory results. In taking up the question anew, and seeking for such a rule, we have examined all that has been done by those who have preceded us in the quest, and we have made what further search we could in the light of their knowledge and experience; and the ultimate conclusion at which we have arrived is that no such rule can be devised or formulated.[1] It would, of course, be possible to lay down some rule which, like Draco's Penal Code, might be embodied in a single section and apply to all cases; but when it came to be put into operation it would work so much injustice to both parties that each would be equally eager for its repeal.

Immense varieties in the subject-matter on which rent depends.

§ 49. The uncertainty of agricultural experience is very great in every country, but probably in no country is it so great as in India. This increases the difficulty of providing against fluctuations of season by average calculations; and the consequences of failure in those calculations are terribly aggravated through the absence of capital, by drawing upon which the agriculturist is in other countries enabled to tide over an abnormal succession of bad years, hoping to replace what is so consumed by increased energy when circumstances are more favourable. The fertility of land depends in India, as in other countries, upon the nature of the soil and sub-soil; and there are in these Provinces numerous varieties of both, well understood by the ryots. In settlement proceedings all over India, from before Akbar's time down to the present period, we find those varieties mentioned and taken into account. Some soils are cultivated with much less labour than others; and this is a very important consideration, where so much has to be done by manual labour, where the race of cattle which supplements the exertions of man is deficient in muscle and vigour, and where the absence of capital and the nature of the country prevent the introduction and use of more effective agency. The rich alluvial *chur*[2] yields a bumper crop in return for the mere exertion of sprinkling the seed on its surface; while the stiffer soil of the higher *máts*[1] baked during the burning months when the heaven is as brass and the earth as iron, and scarcely moistened by the tardy rains, is with difficulty turned up by the straining oxen and the toiling ploughman to be ready in time for the rice seedlings, which one by one have to be planted out through the full expanse of every field. Assuming land to be unlimited in its supply, the average labouring family can in the former case cultivate more land and raise more produce than in the latter case. If half the produce be given as rent, it makes an enormous difference to those who have to subsist on the remainder, whether the half of a hundred measures be given or the half of three hundred. Where the size of the holding is not limited by the amount of labour necessary for cultivation, it may be limited by the pressure of population and the extent of uncultivated land still available. Thus, similar results are produced by different causes. Then, we have differences in situation almost infinite. Where rent is payable in money, part of the crop must be sold to obtain the coin with which the ryot may discharge his liability. If the mart is near, the labour and cost of carriage are inconsiderable, and the ryot can easily go to market when prices are most favourable; but these become a serious item when the produce has to be carried over roadless plains and across unbridged *nullahs* to a distant and uncertain staple. Some fields are near the village and the threshing-floor, and no sooner is the crop ripe than it is garnered, while others lie in a distant *mát* and their produce has to be carried on bullocks' backs or men's heads, many an ear falling by the wayside, to where it can be threshed and winnowed, and this perhaps after the thieving birds and hungry cattle, or it may be the wild hogs from the neighbouring *jangal* have sadly diminished the husbandman's profits, while he is waiting his turn for the busy oxen or the help of his neighbours. Here the water is deficient for the *amun* paddy, and there the *aus* is drowned by an unforeseen inundation. In one part of the country land is sufficiently plentiful to allow a fourth to lie fallow every year, while in another part the soil never gets rest, and there is no manure to keep up its strength, even the droppings of the cattle being collected and dried for fuel. In one *pergunnah* the adult population are healthy and strong to labour; in another, the climate is so bad that one-third on an average are down with fever and ague, and the remaining two-thirds in various stages of convalescence lack the physical vigour necessary to successful toil. In one district the cultivators of the soil have to support but one set of landlords: in another, they have half a dozen or even more middlemen under different names and with various rights having come between the zemindars and the ryots. These are some of the many causes upon which depend the numerous inequalities and variations[2] in the subject-matter with which rent is concerned in these Provinces. No simple rule of uniform application can allow for all these: and unless they are allowed for and taken into account in individual cases, there cannot be fair and equitable rates of rent, for, in order to be really so, they must be fair and equitable in the concrete as well as in the abstract. The conclusion then to which we feel guided upon the whole subject of settlement of rents and enhancement is that the safest course for the Legislature is to lay down certain broad lines upon which the officers of Government (whether in the judicial or executive department) shall proceed in this matter, at the same time providing certain positive checks which experience has shown to be necessary in order to prevent sudden and great changes in the respective conditions of landlords and tenants in Bengal.

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[1] "Rents vary in every village, not merely with the diversities of soil and crops, but also with reference to the caste of the cultivators. The inference to be drawn is, therefore, that *no common rule can be laid down*, and that the failure of past attempts to settle the matter is chiefly to be attributed to the desire which the public officers have had to render that simple and uniform, which is in its nature various, and to their impatience of the detailed investigation by which alone accuracy can be secured."—*Resolution of Government of India, dated 1st August* 1822.

[2] *Chur* is equal to an island or alluvial formation thrown up by a river.

General conclusion upon the above premises.

Existing substantive law of enhancement of rent.

§ 50. We pass from this analysis and discussion of the general subject to the particular provisions which we believe can safely and beneficially be made for the enhancement of rent in these Provinces. It will be convenient to state, in the first place, the existing law upon this important matter. (1) There are no express provisions for the enhancement of the rent of tenures or under-tenures; and the want of a definite enactment on this point has undoubtedly given rise to much expensive litigation. (2) The rent of a ryot having a right of occupancy can be enhanced upon any one or more of the following three grounds, viz., (*a*) that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent; (*b*) that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot; (*c*) that the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him. As a necessary preliminary to the enhancement of the rent of an occupancy ryot, a notice of enhancemnet must be served on him before the close of the year preceding that for which the enhanced rent is claimed, and the failure to serve such notice is fatal to the demand of enhancement; (3) in the case of ryots not having a right of occupancy, that is, all ryots who have held for less than twelve years, there are no express provisions for enhancement, and the practical result is that, if any such ryot refuses to pay an enhanced rent demanded of him, he is evicted by his landlord, though, if he is allowed to remain in possession, more than a reasonable rent cannot be recovered from him.

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[1] *Mát* is equal to a plain, the open cleared space between the belts of trees that generally enclose a village.

[2] When rents are paid in money, the fluctuations in the price of grain are another disturbing element:—"India, more than any other country, is subject to sudden and great fluctuations in the price of grain, so that in many parts of it assessments in money, originally fair, have from this cause alone become excessive."—*Appendix to Minutes of Evidence of the Select Committee of the House of Commons on the Affairs of the East India Company*, 1832, p. 56.

Proposed rules of enhancement for tenures and under-tenures.

§ 51. Taking these three branches of the subject in order, we have, in the first place, provided for the enhancement of the rent of tenures and under-tenures by enacting that in any case in which such rent is liable to enhancement (there are cases in which it is not so liable) it may be enhanced up to the limit of the customary rate payable by persons holding similar tenures or under-tenures in the vicinity, or, where no such customary rate exists, up to such limit as to the court shall appear fair and equitable, but so that the profit of the tenure-holder or under-tenure-holder shall not (in the absence of certain special circumstances to be noticed hereafter) exceed thirty per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting such rents—see section 9 of the Bill. It may be observed that, according to the rule contained in section 8 of Regulation V of 1812, ten per cent. of the balance just mentioned was allowed to the tenure-holder. This section was repealed by Act X of 1859, but by some oversight no provision was substituted by this Act, though the principal as being fair and equitable in itself and usual by reason of the provisions of the Regulation was on several occasions acted upon by the courts after that Act was passed. It appears to a majority of us, after careful consideration, that the limit of *ten* per cent. is too low, and we have accordingly allowed a higher limit, namely, that of a maximum not exceeding *thirty* per cent. in ordinary cases.[1] We have provided for the special and well known case of *jangalburi* holdings by enacting (section 12) that when more than one hundred bighas of land have been demised for reclamation purposes, more than half being at the time unreclaimed, and the whole having been subsequently reclaimed, the rent of the tenant may not be enhanced so as to leave him a profit of less than twenty per cent. of the net balance above-mentioned, and the court may allow him such profit in excess of twenty per cent. as to it appears fair and equitable. In order to prevent these new provisions from working hardship by any sudden and great change, we have annexed the following checks:—(*a*) the enchanced rent shall not in any case be more than double the previous rent; (*b*) the court may direct that the enhancement shall take effect gradually, or, in other words, that the rent shall increase yearly during any number of years not exceeding five, until the limit of the enhancement allowed has been reached; and (*c*) that rent, once enhanced, shall not be altered for ten years, unless on account of alluvion or diluvion—(section 9 of the Bill). We have further settled a doubtful question by expressly enacting (section 8) that, in the absence of an express contract to the contrary, every tenure-holder and under-tenure-holder shall be liable to pay additional rent for land gained by alluvion, and shall be entitled to abatement of rent for land lost by diluvion. We here follow a principle, recognized by the Government in dealing with the cognate subject of revenue, and in accordance with justice, equity and good conscience. We have elsewhere (section 18) applied the same principle to ryots entitled to hold land at fixed rates. We think it unconscionable that when the land has ceased to exist, out of which issues the benefit in which landlord and tenant participate, the tenant, in addition to losing his own share of this benefit, should have to make good the landlord's share, thus conferring upon him the advantage of insurance without the payment of a premium. Then, as it is reasonable that he who seeks equity should do equity, it follows that the tenant, who has been relieved from the payment of rent for land which he has ceased to enjoy, should pay rent for additional land added to his enjoyment. We shall have occasion to return to the question of enhancement of the rent of tenure-holders and under-tenure-holders in connection with another portion of our subject.

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[1] Mr. Justice Levinge mentions in his Minute on Act X a case in which *two-thirds* (he does not say whether of the gross or net collections) were given to the landlord and the residue to the middleman. If the calculation was here made on the net calculations, the collection expenses being taken at ten per cent., the middleman got 30 per cent., being $100 - \frac{2(100-10)}{3} - 10$

Grounds of enhancement of rent of occupancy ryots retained, but an attempt made to improve them.

§ 52. Coming now to the second branch of this portion of the subject, namely, the enhancement of the rent of occupancy ryots, we have, after due consideration, decided to retain substantially the grounds of enhancement to be found in the existing law. We have, however, endeavoured to benefit by the experience of the last twenty years so as to make these grounds clearer and more readily intelligible to the parties affected by them. In doing this we have found it expedient to split up the second ground into two. As re-arranged in section 22 of our Draft Bill, the grounds of enhancement now stand thus :—

(1) that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages *in the vicinity* ;

(2) that the quantity of land held by such ryot has been *shown* by measurement to be greater than the quantity for which rent has been previously paid by him ;

(3) that the productive powers of the land held by such ryot *as compared with such powers at the time when the rent was fixed, or at any subsequent time,* have increased otherwise than by the agency or at the expense of the ryot, *and from causes not merely temporary or casual* ;

(4) that the *prices* of produce *in the locality, or at the usual markets, as compared with similar prices at the time when the rent was fixed or at any subsequent time,* have increased otherwise than by the agency or at the expense of the ryot, *and from causes not merely temporary or casual.*

The first of these grounds corresponds with the first ground in the present law ; the second with the third ; and the third and fourth with the second. We shall make some observations as to each in the above order.

First ground of enhancement, that rent paid is below the prevailing rate, presents no real difficulty.

§ 53. In the first ground we have substituted the words "in the vicinity" for "in the places adjacent." We think that the proof will be facilitated by enlarging the area from which the materials for evidence may be taken. We have added some *illustrations* to indicate the meaning of the words "the same class of ryots." In other respects this ground of enhancement has not presented any difficulties ; and the cases do not show that, so far as it is concerned, any amendment of the law is very urgently required. The idea of a *pergunnah rate* of rent, a prevailing rate paid by tenants of the same class within a certain tract of country, has long been familiar to the people, and, where such a rate is generally known and acknowledged, a landlord has seldom, in the absence of other disturbing circumstances, to put a ryot into court in order to get him to pay rent according to this rate. The germ of dispute and litigation does not lie here. The landlord who seeks to put an individual ryot on an equality with his brethren has public opinion generally in his favour, for human nature in Bengal, as elsewhere, is envious of an individual better off than the rest of the community, and takes pleasure in the assertion of the principle of equality when violated by the superior condition of a neighbour. It is when the landlord seeks to raise the rate for all ryots when all are threatened with a common misfortune that unanimity for self-defence, and combination against the general enemy, rule the village counsels, and leave the zemindar no hope of success without some such coercion as the law permits.

Enhancement on the ground of greater quantity of land being found on

§ 54. The second ground is, in our opinion, misnamed a ground of *enhancement.* If the quantity of land held by a ryot is found upon measurement to be greater than the quantity for which he has been paying rent, and if he is compelled to pay rent for the excess, the whole rent payable by him is increased ;

measurement to be in ryot's possession. This is not enhancement properly speaking. Cases under this head distributable into two classes.

but the *rate* of rent payable is not increased, and the term 'enhancement' might well be confined to this latter increase. The cases under this head may, broadly speaking, be divided into two classes. The first class includes cases of encroachment—where the ryot has encroached upon the uncultivated or unoccupied land of his landlord and has surreptitiously enlarged his holding. These cases are of less frequent occurrence in the more settled parts of the country, where there is little or no waste, where the fields are tolerably well demarcated by *ails* or low boundaries, about a foot and a half high, and every field has a well-known owner. In less populous districts where cultivation is in patches, and a considerable portion of land lies fallow or waste, the opportunity and temptation to encroachment are greater, and the *boná fide* cases of this class are consequently more numerous. Under the second class come those cases in which there is little pretence for saying that any encroachment has really taken place, but a measurement, or the threat of a measurement, is used as a means of obtaining an increase of rent, which the landlord thinks he ought to have, and which he sees no other way of obtaining. There is a dispute about the proper length of the measuring pole, and the landlord, having made the measurement with a pole of his own choosing, hopes to get this dispute settled in his favour, or he trusts to various well-known devices of the measuring *amin* to make the land more than it really is. Even where the landlord is too honourable to resort to such practices, his *amlah* make rich gains out of a measurement; and the ryot, who would refuse to satisfy their cupidity, would find the area of his holding considerably enlarged in the measurement papers, while, if he can pay sufficiently handsomely, he finds no difficulty in getting it untruly understated. Then it may be that rent has not usually been paid at so much per bigha, the practice being for a *jama* or holding, roughly described as containing so many bighas, to be let at a lump sum; and the landlord, taking this rough description as an accurate one calculates the rate of rent, and being able to show that the holding contains more land than is shown by this rough description claims extra rent for the excess. The absence of written leases makes this too commonly possible. We have endeavoured to provide for some of these cases by *illustrations*. The best remedy for the perversion of this portion of the law will be by rendering the results sought to be achieved by such perversion more easily achievable in a legitimate manner and upon the grounds legitimately applicable.

Enhancement on the ground that the productive powers of the land have been increased. Important to consider by whose agency the increase has been effected.

§ 55. The third ground of enhancement is that the productive powers of the land have increased. Now, they may have increased (1) by the agency or at the expense of the ryot, (2) by the agency or at the expense of the landlord, or (3) without the agency or expense of either. In the first case, the ryot is not liable to have this rent enhanced; such is the effect of the words "otherwise than by the agency or at the expense of the ryot." If the ryot has improved his holding, has rendered his land more productive by expending his labour or capital upon it, the benefit of the improvement will be his, and his alone. Thus, the law encourages thrift and industry by guaranteeing the enjoyment of their fruits to the persons who exercise these qualities. Between the second and third cases the present law makes no distinction, and it gives the whole of the increase to the landlord, except in cases of customary rents, in which the rule is limited by the principle of proportion enunciated in the Great Rent Case. In our Draft Bill (section 23) we have given the whole of the increment in the *second* case to the landlord, for the same reasons for which the existing law gives it to the ryot in the *first* case. As to the *third* case, it may fairly be said that, however just it may be to give the whole increase to the landlord when the whole of it is due to his agency or expenditure, the justice of doing this is not so apparent where the landlord has contributed nothing to bring about this increase, and in this respect he and the ryot stand upon equal ground. If it be admitted that the ryot has certain rights, has a certain interest in the land as well as the zemindar, why, it may be asked, should not the former as well as the latter participate in the benefit which accrues to the common property from external sources, over which neither has any influence or control? Accepting the justice of this argument, we have thought it reasonable and equitable in this case to divide the increment equally between the landlord and the tenant as a general rule. It may, however, be observed that when the increment exceeds the old rent the effect of one of the positive checks which we have provided, namely, that no enhanced rent shall be more than double the former rent, may be that the ryot will receive more than half of the benefit (see clause (*b*), section 23 of the Bill). In order to ascertain the measure of the increase, it is necessary to take some point of time in the past between which and the present the comparison may be made. The want of a definite rule on this portion of the subject has been greatly felt. We have provided that the present, *i. e.*, the increased productive powers of the land, may be compared with the productive powers of the same land as they were when the rent was originally fixed, or as they were *at any subsequent time.* The first part of this rule requires no explanation and no comment. A comparison between the productive powers as they now are and the same powers as they were when the rent was first fixed is fair to both parties; but the principle cannot be left depending upon a rule so limited, because in a large proportion of cases the productive powers of the land at the time that the rent was fixed cannot be ascertained. It may have been so long ago that no living evidence is now forthcoming, or it may be that some such evidence is to be had, but that it is utterly unreliable, being merely oral testimony, given long after about that which at the time received no particular attention, and partaking of the usual worthless nature of such evidence. In any such case, if the principle of comparison is to be put in force at all, it becomes necessary to compare the present with a point of time subsequent to that at which the rent was originally fixed. If the productive powers at such subsequent time were less than when the rent was first settled, the calculation will be to the ryot's disadvantage, as the increase upon the original productive powers will appear greater than it really has been. If, on the other hand, the productive powers at such subsequent time were greater than they originally were, the increase will appear less than it really has been, and the ryot will be benefited to the detriment of the landlord. As a matter of fact, we think that neither contingency is very likely to have happened to any great extent in the majority of cases, and that no great injury is likely to be done to either party. We are agreed that when enhancement of rent is allowed on the ground that the productive powers of the soil have increased, there ought to be a reasonable prospect that the causes to which such increase is due are likely to be permanent in their effect and not merely temporary and casual; and we have added to this ground of enhancement words to this effect.

What point of past time to be compared with the present.

Cause of increase of productive powers ought to be not merely temporary or casual.

Enhancement on the ground of increase in the prices of produce.

§ 56. The fourth ground of enhancement is that the value of the produce has increased. It appears to us that this ground of enhancement is altogether distinct from an increase in the quantity of the produce due to an improvement in the productive powers of the soil. We have in consequence entirely separated these two grounds. In stating this fourth ground, we have, in the first place, substituted the term "price," which is equivalent to money-value, for "value," which includes other values besides money-value. We have thus made the language more precise without altering what we understand to have been the intention of those who framed Act X of 1859. The price of agricultural produce has increased enormously in these Provinces during the last twenty or thirty years. This increase is due to two principal causes. In the first place, even while the relative value of the precious metals which are used for the coinage of a country remains the same, there is a constant tendency[1] for the money-value or price of agricultural produce to rise as population increases and improvement progresses. The Province of Bengal has been rapidly progressive in every way during the last century of peace and security. Population has increased. A large and still expanding export trade has brought the demand of other countries to bear upon prices in addition to the enlarged demand of the Province itself. In the second place the coinage consists of silver, and the relative value of silver has been gradually decreasing. The price or money-value of produce has therefore risen. We are of opinion that the landlord should have a share in the increase of price due to the above two causes. It is not possible to separate the respective effects of these causes and so calcu-

Examination of increase of price.

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[1] Political Economists lay down the proposition that while the rate of profit and interest has a downward tendency in a progressive community, rent (*i. e.*, in their sense of the term 'rent'), on the contrary, tends to rise incessantly—that in fact, all progress in wealth and population tends to a rise of rents.—See *Mill's Political Economy*, Vol. I., p. 386; *Systems of Land Tenure in Various Countries*, p. 221. Where capitalist farming prevails, any fall in the usual rate of profit and interest must operate directly to increase rent: but, apart from this cause, rent increases in a progressive community. An advancing population has a tendency to create a larger demand for food, and the price rises in consequence.

late how much of the increase is due to each. The landlord ought, however, according to our view, to participate in the benefit arising from each. The first cause, *i. e.*, the general progress of the community, makes the land more valuable as a natural agent for the production of food. The increase of value, if not taken by the State—and the effect of the permanent settlement is that the State does not take it—must go to those whom the law allows to keep all that interest in land which constitutes property in land. Now the persons, who in these Provinces have this property in the land under the existing law, are the zemindars and the ryots, not the ryots only. Therefore the zemindars, having a share in that complete interest which constitutes property, ought to have also a share in that increase of value which is an accession to that interest. The effect of the second cause is to diminish the value of the rent payable in silver in relation to all commodities, which the landlord can obtain for the money which he receives as his rent. This money, therefore, represents a smaller share of the produce than it did before the relative value of silver fell. It is but equitable, therefore, that the money rent of the landlord should be increased so as to make it represent a share of the produce equal to what it represented when the rent was originally fixed. Then there are other considerations. The benefit accruing from the operation of the first cause is limited by the quantity of the produce which the ryot sells or barters away. In respect of the portion retained for consumption by himself, his family and his cattle, and for seed, there is no direct benefit from the rise in price, because this portion does not come into the market. Here the first cause differs from the second, and it differs also from the third ground of enhancement, under which the excess quantity of produce obtained from the increased productive power of the soil represents so much clear benefit. From this analysis it will appear that the component elements of this ground of enhancement are sufficiently complex; and, looking at the above considerations, it is not very easy to say how the increment arising from increase of price ought to be divided so as to make the division fair to both parties.

§ 57. Here, as in the case of the third ground, it is possible to conceive that the increase of price may be brought about (1) by the agency or at the expense of the ryot, or (2) by the agency or at the expense of the landlord, or (3) without the agency or expense of either. In the first case, as the law now stands, the rent of the ryot is not liable to enhancement. He receives the full benefit of the increase in price which he has himself brought about. That is the effect here also of the words "otherwise than by the agency or at the expense of the ryot," and we do not propose to alter this. At the same time it is not easy to suppose a case in which the ryot could effect an increase in the price of the produce solely by his own agency or at his own expense. In so far as better prices may be due to improved means of communication, which have been effected by the road cess or public works cess funds, we have provided that the ryot shall pay so much less enhanced annual rent as is equal to the annual sum which he has contributed to these funds. In the second case, or where the increase of price is due entirely to the zemindar's agency, or has been brought about altogether at his expense, it appears to us, on the whole, to be reasonable that he alone should receive the entire benefit. A case of this sort might occur where a zemindar had opened a new *hât* and improved the means of communication between it and the lands of his estate. In the third case, which is by far the most common, the case, that is, of an increase of price brought about by neither the zemindar nor the ryot, but by general causes, the reasoning used above (§ 55) in respect of the similar case arising upon the third ground of enhancement appears to have equal application. Having given the whole subject in its diversified details what consideration we have been able, a majority of us think that the fairest general rule here also will be to divide the increment equally between the landlord and tenant. Messrs. Mackenzie and O'Kinealy would in this case, as well as in the analogous case under the third ground of enhancement, give two-thirds of the increment to the ryot and the remaining one-third to the landlord.

Increase of price may be due to the agency (1) of the ryot, or (2) of the landlord, or (3) of neither. Who should receive the benefit in each case.

§ 58. As to the period of past time between which and the present the comparison should be instituted, and as to the causes of the increase being not merely temporary or casual, the remarks above made upon the third ground of enhancement apply. Then as to the markets, the prices of which should

Comparison to be made between prices of what times and places.

govern, we have provided that the prices in the locality or at the usual markets are to be taken. There ought to be sufficient evidence of these prices procurable from the local *mahajans* and their books or from other sources. We have further facilitated the proof by providing for the preparation and publication of annual official price lists, the object and use of which we shall explain hereafter.

Prices of what crops to be taken as the basis of calculation.

§ 59. The next question which has engaged our attention in connection with this part of the subject is the very important one of the species of produce which shall be taken for the calculation of prices. Shall these prices be calculated for all the crops actually grown on the lands, as well for special crops requiring special care and cultivation, as for the ordinary food crops of the district. During the period antecedent to British rule it was usual to vary the rent with the crops cultivated. Section 56 of Regulation VIII of 1793 enacted that "where it is the established custom to vary the pottahs for lands according to the articles produced thereon, and while the actual proprietors of land, dependent talukdars or farmers of land and ryots in such places shall prefer an adherence to this custom, the engagements entered into between them are to specify the quantity of land, species of produce, rate of rent, and amount thereof, with the term of the lease and a stipulation that in the event of *the species of produce being changed* a new engagement shall be executed for the remaining term of the first lease, or for a longer period if agreed on; and in the event of *any new species being cultivated* a new engagement with the like specification and clause is to be executed accordingly." It can well be understood that a despotic Government or its more despotic subordinates observed carefully any circumstances that would enable the cultivators to pay more than had previously been obtained from them. Where the share of the State was taken in kind, a less proportion was always accepted for special crops in consideration of the greater care and expense necessary to their production. Where the share of the State had been commuted to a money-payment, very high rates were imposed on the lands on which special crops were grown. These rates were too often regulated more with reference to the aggregate value of the gross produce, which was very considerable, than upon a due allowance for the cost of production, which was a very much larger item in proportion than in the case of ordinary crops. In reasonably good years the ryot was able to pay and make a good profit; then came a year of failure, it may be when he had made a larger venture than usual, and the little capital vanished, while the high rates had to be paid, and perhaps the *mahajan's* assistance had to be called in for this. The memory of the year of failure survived, kept green by the mahajan's long surviving claim, while the years of success from which little or nothing was saved were soon forgotten. It thus happened that the exaction of very high rates for fields devoted to special cultivation discouraged and retarded agricultural improvement. It may be well to draw here a distinction between higher rates for superior land capable of producing superior crops and therefore suited for these special crops—such rates being paid without direct reference to the particular crops actually produced from year to year—and higher rates assessed with direct reference to the crops annually grown. The latter are sure to run much higher than the former, and in a bad year the loss and the cause of it are felt more distinctly. This distinction and the bad effects of levying a high rate directly on the crop were understood many years ago. As early as 1792 the Government wrote as follows in the Revenue despatch of the 12th December of that year:—"Apprehending that the present great demand for sugar and the consequent rise in the price of it might induce some of the landholders to exact from their ryots an enhancement for the ground appropriated to the cultivation of the cane; and, as such shortsighted policy would have discouraged the extension of the cultivation of it, and consequently prevented the establishment of a trade in sugar between this country and Europe, we thought it advisable to issue a notification to the landholders prohibiting any enhancement of the rent of the sugarcane lands upon the ground of its being repugnant to the usage of the country as well as detrimental to their own interest and that of the State at large." We find the Directors writing out in 1837 to the following effect:—"It is the productive power of the land, and not its actual produce, that should be taken as the guide in making the assessment. By this mode the best des-

Question of special crops considered.

cription of encouragement is given to the cultivator to extend cultivation and raise crops immediately beneficial and profitable to himself, and such a system, we have on a former occasion observed and are still of opinion, would not ultimately be found detrimental to the interests of the State." We do not therefore propose to interfere with any existing classification of lands based on their superior quality or capability of producing special crops, but we think that, in regulating enhancement of rent of the ground of rise of prices, account should be taken of the ordinary or staple crops only. A different rule would, in our opinion, tend to discourage the cultivation of new and valuable species of production, and so prevent agricultural improvement. By allowing the Board of Revenue to declare from time to time what shall be taken to the staple crops for particular areas, an opportunity will be afforded of making any new crop a staple as soon as its cultivation has been thoroughly and generally established. As to special crops, such as betel-leaf, tobacco, sugarcane, and such like, we think that, as they are grown only occasionally or in small quantities, and require particular attention and involve special expenditure, they ought not to be considered in settling enhanced rents. We may further observe in support of this view that, in commuting the Tithe into a money-payment in England, staple crops only were taken into account, the staples selected being wheat, oats, and barley.

Question of what landlords shall be allowed to enhance rents.

§ 60. With reference to the question of what landlords should be allowed to enhance rent, we were much impressed with a suggestion that *ijarahdars* should not be allowed to enhance the rents of the ryots holding land within the area of their *ijarahs*. On careful consideration it has, however, appeared to a majority of us that as the zemindar's proprietary interest may by law be leased either for a term or in perpetuity, it would not be quite consistent to say that the lessee may not take one particular portion of this interest, if the zemindar chooses to convey it. In proposing a procedure for the enhancement of rents, we have, however, felt ourselves at liberty to say that a mere leaseholder, of whose interest less than ten years remain unexpired, shall not have equal facilities in this respect with landlords having a permanent interest. To take away from zemindars under all circumstances the right of giving their *ijarahdars* authority to enhance rents would be to take from them something which they already have, would curtail the proprietary interest in the form in which it has existed since the time of the Permanent Settlement, and might interfere with vested rights. In giving a new facility, however, we see no reason why it should not be withheld from a class whose existence does not contribute to the welfare of the agricultural community.

Enhanced Rent in certain cases not to be more than double the former rent. Positive checks upon enhancement.

§ 61. Having thus indicated the broad substantive principles which should, in our opinion, regulate the enhancement of rent, we turn to the positive checks which we think should be applied in order to prevent hardship as the result of the operation of these principles. And first we have provided that when enhancement is allowed on the ground that the productive powers of the soil have increased, or on the ground that prices have risen, the enhanced rent shall in no case be more than double the former rent. It usually happens that the causes which here create the basis of the increase are gradual in their operation, and the cultivator gradually gets accustomed to the enjoyment of the increase. To have to give up and hand over to his landlord any part of what he has appropriated and learned to regard as his own, seems hard to a person who, like an uneducated cultivator, is more prone to consider the present grievance than the past benefit which he has been enjoying. If so much is suddenly taken as to effect a sensible change in his position and standard of comfort, a feeling of injury is excited, which it is impossible to say has not some foundation in reason. If an European were required at a few months' notice to pay four times the rent which he had been in the habit of paying for his house, he would resent it as an intolerable grievance; and if he were compelled to keep the house and pay the quadruple rent, he would regard it as legalized tyranny. Now, a ryot may not be positively compelled to keep his land, but he cannot give it up because it is to him the means of subsistence, and he feels as much bitterness as the European at being forced, upon a few months' notice, to pay treble or quadruple his former rent. We think it reasonable, therefore, that no ryot's rent should be advanced *per saltum* to more than double; and as there may be cases in which even this increase would involve very great hardship, we have further allowed

Progressive enhancement.

Rent limited in certain cases to a fixed proportion of the value of the gross produce.

progressive enhancement, that is, by a gradual yearly increase for any number of years not exceeding five until the limit of the enhancement allowed has been reached. We have allowed progressive enhancement in all cases in which the Court or the Collector sees fit—cases, that is, falling under all four grounds of enhancement. The double limit we have restricted to the third and fourth grounds. If a ryot has been paying less than the prevailing rate for his land, or if he has encroached and has been cultivating excess land without paying rent for it, the circumstances may be such that a very large and sudden increase would involve hardship or even put it beyond his power to pay, and so his rent may well be raised gradually to what he ought to pay; but there is not any argument that we can see in support of the limit of double rent not being exceeded in these cases. Indeed, in the case of encroachment, it would be a positive encouragement to wrong-doing on a large scale, as all the land taken beyond a certain quantity would be acquired rent-free. We have enacted (section 23, clause (*c*)) that when the rent of an occupancy ryot is enhanced upon the first, third or fourth ground, the enhanced rent shall not be more than one-fourth of the average annual value of the gross produce; or when such occupancy ryot holds under another ryot who has a right of occupancy, not more than three-tenths of such average annual value. A proposition that in no case should the rent of a non-occupancy ryot exceed forty per cent. or two-fifths of the annual average value of the gross produce was lost by a single vote. Finally, we have provided that when rent is enhanced on the third or fourth ground, and a table of enhanced rents prepared by the Collector, such table shall be binding on both parties for ten years. This will not prevent enhancement of rent for land gained by alluvion or abatement of rent for land lost by diluvion during this decennial period: and upon this subject the remarks already made (§ 51 above) are applicable.

Right to enhance how far allowed to be affected by contract.

§ 62. How far the right to enhance given by the law should be allowed to be affected by contract between the landlord and tenant is a point upon which we have found it desirable to lay down a two-fold rule. We have provided (section 24) that when a ryot holds under a written lease for a term certain which has not expired, his rent shall not be liable to enhancement during such unexpired term. We have also expressly provided that there shall be no enhancement when a ryot and his landlord have contracted that such ryot's rent shall not be enhanced. It may be thought that in the latter case, and indeed in the former case also, unless the language of the writing was extremely vague, the ryot is sufficiently protected. But we have thought it well, here as elsewhere, to leave as little as possible to construction, and to use express language so as to avoid doubt.

Procedure for enhancement. Importance of this part of the subject.

Notice of enhancement dispensed with. Reasons for the change.

§ 63. We now come to consider the procedure by which effect may be given to the above recommendations concerned with the substantive law. We entirely agree in the view advanced by the *then* Government of India in their Revenue letter dated 7th October 1815:—"Whatever rights the ryots may be declared in theory to possess, the practical benefits arising from any measure of that sort will be very limited, until means shall be devised, on the occurrence of disputed claims, of ascertaining with accuracy and facility the rent which they should individually pay, and an authority created for deciding on all such cases with the utmost promptitude." In treating this part of the subject also we have found it expedient to consider the four grounds of enhancement separately. Before, however, proceeding to analyze the subject in connection with these grounds, it will be important to mention that we have dispensed with the notice of enhancement which is required by the present law, and which was also required by the old Regulations in force before 1859. Such a large percentage of enhancement cases have failed, because it was not found that the notice had been served, or because the notice was defective in form, that it has appeared to us highly expedient to do away with a detail, the practical result of which has been to delay and impede a decision of the real question at issue between the parties. We have accordingly made the institution of the enhancement suit to be notice to the tenant. Under the existing law the enhancement notice must be served, in districts or parts of districts where the Fasli year prevails in or before the month of Jeyt, and in districts or parts of districts where the Bengali year prevails in or before the month of Pous. The very proper and reasonable object of this is that the ryot may know the fact of increased rent being claimed in such time as will enable him to relinquish the land before the end of the agricultural year if he is unwilling, to hold it at an increased rent. If the notice is not served in or before the month of Jeyt or Pous, it will not affect the rent of the following year. We have effected the same object by requiring the plaint, in order to affect the rent of the following year, to be presented, in districts in which the Fasli or Umli year prevails, in or before the month of Baisakh, and in districts in which the Bengali year prevails, in or before the month of Aughan, *i. e.*, one month earlier than the time for service of the present notice. This will enable the summons in the suit to be served at or before the time at which the notice is now served, and the tenant will therefore have an equal facility to relinquish the land before the close of the agricultural year if he is unwilling to continue to hold it at an increased rent (section 96 of the draft Bill).

First ground of enhancement—Cases concerned with, may be conveniently tried by what tribunal.

§ 64. Directing now our attention to consider the subject of procedure with reference to the grounds of enhancement singly, and taking the first ground in order, *viz.*, that the rate of rent paid by the ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity—this is a ground upon which a zemindar in the great majority of instances finds it necessary to proceed against a few individual ryots merely. There is no reason why the civil court should not try the questions which have to be decided between the parties; and, as the lands in each case must be different, there is a certain advantage in trying the individual cases separately. Even where the cases exceed a few, as the prevailing rate must be paid by the majority, the ryots against whom the zemindar requires to proceed must yet be a minority of the whole number. Here, if there be no real dispute as to the prevailing rates, and if the question is as to the applicability of these rates to the particular lands held by each ryot, the cases are well tried separately by the civil court. If, on the other hand, there is little dispute as to the nature and classification of the lands held by each ryot, and the main question at issue in all the cases is the prevailing rate, both economy of agency and efficiency of decision are secured by bringing all the cases before a single tribunal at the same time. The question of what is the prevailing rate in the vicinity is more likely to be satisfactorily decided upon all the evidence which the zemindar and all the ryots concerned can produce, than upon fragments of the same evidence in isolated cases, which, if decided upon the evidence in each respectively produced (as they should be), may have to be decided in different and perhaps contradictory ways. We have therefore thought it desirable to give the Collector a concurrent jurisdiction with the civil court in cases depending upon the first ground of enhancement. It may then be asked how we propose, with reference to the above remarks, to bring before each tribunal the cases most proper for it to try. It is not very easy to do this completely and exactly, as must be manifest from the nature of the tests; but, so far as it is possible to accomplish it, we have endeavoured to do so by allowing the landlord to choose his own tribunal in the first instance, and then providing for a transfer of the cases, if numerous, from the civil court to the Collector (section 130 of the draft Bill), if the landlord has in the first instance chosen the former tribunal. If the cases are few and isolated, and the landlord selects the Collector as his tribunal in the first instance, we do not see that the tenant is likely to be prejudiced. In cases of concurrent jurisdiction, it is usual to allow the plaintiff to select the tribunal. In the first instance this is necessary; then, where a transfer from one to another tribunal is permitted, the defendant can move for such transfer. When the cases are first instituted before the civil court, or partly in the civil court and partly before the Collector, any tenant can move the civil court to act under section 130, and so can have all the cases brought before the Collector. When the cases are instituted before the Collector in the first instance, we see no advantage to either party in transferring them to the civil court, and we have not provided any way of doing so.

Concurrent jurisdiction given to the Civil Court and the Collector.

Concurrent jurisdiction given also in cases depending upon the second ground of enhancement.

§ 65. Cases proceeding upon the second ground of enhancement, namely, that the quantity of land held by the ryot has been shown by measurement to be greater than the quantity for which rent was previously paid by him, can be tried equally well by the civil and revenue courts. We have here also given a concurrent jurisdiction to these tribunals, and much of what has just been said applies. The cases which would be conveniently tried together by the Collector are cases in which the ryots on an estate collude together and refuse to point out the plots of land held by them individually. For example, a purchaser of an estate at a sale for arrears of Government revenue may find that the sum total of the quantities of land given by the ryots individually as in their possession falls very far short of the area of the estate. He may proceed to make a measurement, and find that this will help him in no way, because the ryots will not point out the fields occupied and cultivated by each of them. We may observe, in order to make this more intelligible to persons not acquainted with the country, that a ryot's holding very seldom consists, like an English farm, of contiguous fields lying within a ring fence, but is made up of plots, often mere strips of land, in different places on different sides of the village, each ryot having a portion of the good and inferior land and of each of the soils suited for particular species of cultivation. An auction-purchaser who buys at a revenue sale or at a sale in execution receives no assistance from the former proprietor, who regards him as an usurper. The ryots, either dreading an enhancement of rents or regarding the opportunity as a favourable one to throw off some of the burdens imposed by their late landlord, understate the quantity of land held by each of them. Under such circumstances single suits brought against individual ryots and tried separately are infructuous, whereas when a complete measurement of the estate is made, the quantity of land in the possession of each ryot is known accurately, and the excess beyond what he was previously paying rent for can be assessed. We are here assuming that the new landlord is able to ascertain the rent previously paid by each ryot, and the quantity of land for which it was paid. There are, however, cases in which an auction-purchaser is unable to obtain this information. We shall hereafter come to the consideration of these cases, for which also provision has been made.

Concurrent jurisdiction given to the civil courts and the Collector in cases depending on the third ground of enhancement.

§ 66. The third ground of enhancement is that the productive powers of the land have increased otherwise than by the agency or at the expense of the ryot. Here also we have given the civil court and the Collector concurrent jurisdiction. These are not, as a rule, isolated cases. It is not easy to conceive any cause which could render the holding of an individual ryot more fertile than previously, without simultaneously affecting the holdings of neighbouring ryots in a greater or less degree. An inundation bringing with it a fertilizing alluvial deposit, a canal supplying water for irrigation, a system of drainage converting a water-clogged soil into rich cultivation, an embankment protecting crops from being drowned and villages from being immersed—these and other possible causes of increased fertility within the meaning of the rule must affect considerable tracts and more than a few cultivators. If the majority of those affected accept the enhanced rates of rent claimed by the landlord, a prevailing rate will be obtained, and the landlord can proceed under the first ground of enhancement. If a majority will not accept the enhanced rents claimed, or if the minority who decide to litigate includes a considerable number of persons, the cases can with advantage be tried together, as the cause of the increase of the productive powers of the soil is common to them all, and it is desirable to have the whole of the evidence on this point brought together and considered together.[1] When the landlord does not himself select the Collector's Court in the first instance, the provisions of section 130 of the draft Bill afford a facility for bringing the whole of the cases and the whole of the evidence before this tribunal.

Civil Court not suited for dealing with cases depending on the fourth ground of enhancement.

§ 67. We now come to the fourth and the most important of the grounds of enhancement, namely, that the price of the produce of the land has risen. This is a general cause affecting the length and breadth of the land, and concerning every person in the receipt of rent from the cultivators. Upon the fullest consideration, a majority of us think that the civil court does not here afford the best machinery for adjusting the enhanced rents which ought to be paid by the ryots to their landlords. In the first place, the method of the civil court is to apply a general principle to particular instances. This general principle is usually postulated. It may be contained in a written law, or in a custom, or may have to be extracted from a number of decided cases. However this may be, the court does not create the principle for the occasion. Its modes of procedure are not suited for doing this, are indeed rather opposed to doing it well or successfully, as they (generally speaking) exclude *res inter alios actæ*, and confine their attention to what has taken place between the parties themselves. To this rule there are some exceptions, the court sometimes dealing with a considerable number of persons who have the same interest in the suit; but none of these exceptions extends so far as the creation of a new general principle applicable to the whole community, or a very considerable class in the community. The authority which makes new general principles or rules is the Government acting in civilized countries in the Legislative Department. The method of doing this is, not to make every individual in the State a party to a formal proceeding and take all the evidence produced by those in favour of, and by those opposed to, the measure—this would be impossible—but to propound the proposed general rule, formulated by persons of supposed superior knowledge and experience, to debate it in public, and to give any class or individual likely to be affected by it an opportunity of making a representation for or against the proposed measure through the proper channel. While we think that, on the one hand, the civil court is not well calculated by its form of proceeding to make a new general rule for the whole agricultural community, or for a portion of that community resident in a district or considerable area, we also think that, on the other hand, the general principle, the general rule which ought to be supplied to the civil court for application to particular cases, cannot well be made by the Legislature, because the general principle required is not a simple one adapted for uniform and universal application, but a complex one to be varied in its application to particular districts, or portions of districts, according to the circumstances existing at the time of its application. These circumstances are capable of being ascertained only by local investigation, and this may be materially assisted by taking evidence in judicial form. The range of inquiry is, in other words, too wide for the civil court, too limited and varied for the Legislature. We think then that the general rise of prices which should regulate the enhancement of rent over a considerable tract of country can best be ascertained and determined by some machinery intermediate between the Legislature and the Judiciary, partaking of the nature of each, but confined to the forms of neither. We have made the Collector the mainspring of this machinery, arming him with judicial powers to take evidence when information can thus best be obtained, assisting him with a staff of subordinates in the working out of details, and subjecting his conclusions to the test of the greater experience and authority of the superior officers of the Revenue Department. We think that with this machinery it ought not to be impossible to ascertain the general rise of the prices of staple commodities during a number of years in a given tract, and apply the measure of enhancement so obtained to the particular cases of individual ryots. We shall come presently to the procedure by which we have attempted to guide the Collector in the performance of the duty thus laid upon him.

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[1] Section 30 of *The Code of Civil Procedure* provides that where there are numerous parties having the same interest in one suit, one or more of such parties may, with the permission of the court, sue or be sued, or may defend in such suit, on behalf of all parties so interested, notice being given by public advertisement or otherwise to such parties. We are not aware that any attempt has ever been made to sue a number of ryots occupying different holdings making them co-defendants in a single suit in the civil court on the ground that they were all jointly concerned in the question of a prevailing rate, or an increase of productive powers.

Equal facilities for enhancement not afforded to mere farmers and landlords having a permanent transferable interest.

§ 68. It will be convenient to mention here what landlords we think should be allowed to take proceedings to enhance in the civil court or before the Collector. We have classified landlords for this purpose under two heads—*first*, landlords having a permanent transferable interest; *second*, landlords having a farming or lease-hold interest in the lands of which the rents are payable to them. Regarding the Collector's tribunal as an increased facility for enhancement, we have thought it inexpedient to afford this increased facility to landlords of the second class in every case. We have accordingly allowed landlords of the first class only to go to the Collector with cases depending upon the *first* and *second* grounds of enhancement, while we have left the civil court open to both classes for these cases. The landlord of the first class may go to either tribunal on the *third* ground of enhancement, but the landlord of the second class, the mere farmer or lease-holder, though the civil court is open to him in all cases, may not call in the agency of the revenue authorities, unless a period of not less than ten years of his interest remains unexpired. Upon the *fourth* ground the civil court is open to neither class of landlords; but he, whose interest is permanent and transferable, may always go to the Collector, while the farmer or lease-holder may not proceed before this officer, or, in other words, may not enhance rents at all upon this ground unless a period of not less than ten years of his interest is unexpired—see section 95 of the draft Bill.

Proceedings in the civil courts to enhance rents.

Particulars to be given in plaints.

§ 69. When a landlord desires to proceed in the civil court in the first instance to enhance the rent of a ryot having a right of occupancy he must present a plaint in the usual way. If enhancement is claimed on the *first* ground, this plaint must state (1) the quantity of land held by the ryot, and when such land consists of different classes, the quantity of each class; (2) the rate of rent actually paid for such land or for each class of such land; and (3) the alleged prevailing rate which the plaintiff claims instead of the rate actually paid. When enhancement is claimed on the *second* ground, the plaint must state (1) the quantity of land for which rent was previously paid by the ryot, and, when such land consists of different classes, the quantity of each class; (2) the amount of rent paid for such land and the rate or rates at which such rent was calculated; (3) the quantity of additional land for which plaintiff claims additional rent; (4) the amount of additional rent claimed for such additional land; and (5) the total rent claimed, that is to say, the total of (2) and (4). When enhancement is claimed on the *third* ground, the plaint must contain the same particulars as (1) and (2) just specified, and must further state (3) the cause and extent of the alleged increase in the productive powers of the land; and (4) the enhanced rent or rates of rent which the plaintiff claims to receive in consequence of such increase. These particulars will, we trust, enable the court to comprehend clearly what it has to try, and the defendant in each suit to understand the case which he has to meet.

General provisions of *The Code of Civil Procedure* applicable to the trial of enhancement suits.

§ 70. Plaints in enhancement cases are to be dealt with by the civil courts under the general provisions of *The Code of Civil Procedure.* The abbreviated procedure contained in Chapter XVIII of the draft Bill will have no application to such suits (section 98). In any case in which enhancement is decreed, the enhanced rent shall be payable from the commencement of the year following that in which the plaint was presented to the court. We have also provided that the civil court shall have full power to decide upon the landlord's right to enhance, and upon the fairness of the enhanced rent demanded, and may declare the landlord entitled to such enhanced rent or to *any less rent* which may be found to be fair and equitable; and *shall* decide all questions relevant to the enquiry directly raised between the parties so as to avoid, as far as possible, a multiplicity of suits. We have endeavoured to explain the intended application of this principle by some illustrations taken from decided cases. Certain recent decisions upon the subject of *res judicata* now make it more important than ever that material issues directly raised between the parties should be definitively tried, instead of its being left to doubt in subsequent litigation what the result may have been of such issues having been raised and left undecided.

Procedure before Collector applicable to three classes of cases.

§ 71. Coming now to the details of the *enhancement procedure* provided in the Bill for the Collector, we think that there are three general classes of cases, to meet which more particularly this procedure should be directed, *viz.*,—

I.—Where the dispute is merely about rates, and there is reason to believe that if the rates were once authoritatively settled for different classes of land, the landlord and his tenants would find no real difficulty in arranging what rent each ryot should pay according to these rates:

II.—Where the dispute is not only about rates, but also about the quantity or quality of the land held by each ryot or about both, and nothing but the preparation of a detailed *jamabandi* or rent-roll can settle all matters in controversy between the parties:

III.—Where the landlord, being a new purchaser at a revenue or execution sale, is unable to ascertain the previous rents payable by the tenants, or the exact lands held by them, or both. Here there may possibly be no enhancement, and the purchaser may be content to collect the rents payable to his predecessor, if he can only discover for certain what those rents were.

We proceed to show how the procedure which we have provided is adapted to meet the requirements of each of these three cases. Before doing so, we may remark that the landlord who applies to the Collector for enhancement is termed *the applicant*, and that the application is to be made to the Collector of the District in which are situate the lands, or any portion of the lands, to the rent of which *the applicant* is entitled. When the lands are situate in two or more districts included in the same Commissioner's division, such Commissioner, and when the lands are situate in two or more districts not included in the same Commissioner's division, the Board of Revenue, may, for any sufficient reason, direct that any such application be transferred to any other Collector within whose Collectorate any portion of the lands is situate. The first portion of this provision follows *The Code of Civil Procedure*, under which a suit for immovable property may now be instituted in any district in which any portion of such property is situate. It is expedient that the superior revenue authorities should have a power of transfer, when from considerations of convenience or for other reasons it is desirable that an application should be dealt with by the Collector of one rather than the Collector of another district.

Application for enhancement to be made to Collector of what district.

§ 72. In the first of the three cases put above *the applicant* will ask the Collector to prepare a *table of rates* for the estate, tenure or under-tenure, in respect of which the application is made. We have defined a "table of rates" to mean "a table or schedule which exhibits the classes of land in an estate, tenure, or under-tenure according to the classifications usual in the locality, and the rates of rent payable for each class. When enhancement is claimed on the first or second ground, such table must exhibit the prevailing rates payable immediately before its preparation; and when enhancement is claimed on the third or fourth ground, such table shall exhibit such prevailing rates and shall further exhibit the enhanced rates allowed by the Collector upon such grounds respectively." *The applicant* is required (section 101) to file with his application a copy of the table of rates which he alleges to be fair and equitable, and according to which he claims to collect enhanced rents from the occupancy ryots; and he must further distinctly specify in his application the grounds upon which he claims to enhance rents and when these grounds came into existence. The copy of the table of rates so filed and the grounds so stated make up a complete statement of *the applicant's* case; and it is important to bear in mind that this case is concerned with the occupancy ryots *generally* of the estate, tenure, or under-tenure, and not with the *particular* circumstances of these ryots individually.

In the first case *the applicant* will ask for a table of rates.

Meaning of "table of rates."

Application to include what particulars.

§ 73. It will be convenient to make here a few remarks about the distribution of land into different classes. We believe that such a distribution according to a more extended or more limited classification prevails in every estate; and that it is well known to, and well understood by, the ryots. The "established rate" of rent generally payable for each class is also well known; and, in the majority of instances, where no discord and no disputes have perturbed the clear waters of truth, can without much difficulty be ascertained. Our colleague, Baboo Peary Mohun Mukherji, who has had considerable practical experience in his own and his father's estates, tells us that the classification of the land is carefully made when a village is measured, and that all disputes as to the class in which any particular plot of land should be placed are then settled with the aid of the village mandals. He says that every landlord who has any pretensions to good management is careful to have his estate measured: and that the measurement papers (*chita*) then furnish him with a record not only of the areas of the ryots' holdings, but also of the quantities of each class of land included in each holding. He furnishes us with the following specimen classification :—

Classes of land, and rates of rent.

Example of classification of land.

				Per bigha. Rs.
I.—Soona land,	awul or first class, at	...	...	... 5
Ditto	duim or second class, at	...	...	... 4
Ditto	seyam or third class, at	...	...	... 3

Soona land is the higher and better land not liable to inundation and produces *aus* paddy, pulses of kinds, potatoes, sugarcane and indigo.

	Per bigha.	
	Rs.	As.
II.—Sali land, awul or first class, at	4	0
Ditto duim or second class, at	3	0
Ditto seyam or third class, at	2	8
Ditto chaharam or fourth class, at	1	8

Sali land produces amun paddy, sesame, múg and jute.

III.—Danga or high arable land, at Rs. 6 per bigha, produces sugarcane, potatoes, brinjals and indigo.

IV.—Land on which bamboos are produced, at Rs. 5 per bigha.

V.—Land on which fruit trees and vegetables are grown, bagat, at Rs. 5 to Rs. 8 per bigha.

VI.—Land on which mulberries are grown, at Rs. 6 per bigha.

VII.—Land on which betel leaves are grown, at Rs. 15 per bigha.

VIII.—Bastu or homestead land, at Rs. 10 per bigha.

IX.—Udbastu or land adjoining the bastu land, at Rs. 7-8 per bigha.

X.—Doba or small hollows, where fish are caught in the rains, at Rs. 2 per bigah.

XI.—Ghaskar or pasturage, at Re. 1 per bigha.

This classification gives us eleven different classes of land, two of which again contain seven sub-classes.

Publication of applicant's table of rates with notice to ryots to agree or state objections, within one month.

§ 74. *The applicant* having stated his case, the next step is for the Collector to ascertain what the ryots have got to say in reply to it. To this end he has a copy of *the applicant's* table of rates posted up at the *mal kachahri* of each village to which the lands belong, or at some conspicuous place in such village, or upon such lands, and also has it proclaimed by beat of drum that such copy has been so posted up, together with a notice calling upon the ryots to appear within one month and agree to the rates specified in such copy or state their objections, if any, thereto. If all the ryots accept the rates, the Collector will record the fact, and there is an end of the matter. If, on the contrary, the ryots or any of them object to the rates, it will be the duty of the Collector to proceed to prepare a table of those rates which he finds to be fair and equitable. He will duly consider the case set up by *the applicant* and the objections made by the ryots, and will take such evidence and make such inquiries as he may find necessary; and, having done this, he will draw up a statement of his proceedings, and will therein state the grounds upon which he allows or disallows the rates claimed by *the applicant* or any of them, or allows lower rates in substitution therefor.

Proceedings when ryots appear and assent or object.

Nature of the proceedings when enhancement is claimed on the *first* ground.

§ 75. If enhancement is claimed on the *first* ground, namely, that the ryots are paying a rate of rent below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity, the Collector will ascertain the prevailing rates payable in the vicinity for classes of land similar to those in the estate, tenure or under-tenure with which his proceedings are concerned. He will confine himself to this general point. If any particular ryot contends that he does not belong to the same class of ryots, or that his land has not similar advantages to the class of lands, respectively, which are selected from the vicinity for comparison, the Collector will decline to enter upon these individual questions. If upon the publication of the table of rates *the applicant* and the ryots are unable to settle matters between themselves, *the applicant* will have two courses open to him, as will be shown hereafter. He can proceed in the civil court to enforce the table of rates against the ryots individually, or he can ask the Collector to prepare a *jamabandi*. In either of these proceedings the ryots will have a full opportunity of stating their individual cases, and having them duly considered. Similarly, if enhancement is claimed on the *second* ground, namely, that the quantity of land held by the ryots has been shown by measurement to be greater than the quantity for which rent has been previously paid, the Collector will ascertain and declare the prevailing rates payable for each class of land, but he will not determine how much excess land is in the possession of any particular ryot, or to what class such excess land belongs. These are questions to be settled when *the applicant* proceeds further to enforce the table of rates against the ryots individually.

Or on the *second* ground.

Nature of the proceedings when enhancement is claimed on the *third* ground

§ 76. If enhancement is claimed on the *third* ground, namely, that the productive powers of the lands held by the ryots have increased otherwise than by the agency or at the expense of such ryots, the Collector will have to ascertain the extent of the increase with reference to the terms of the law. Having ascertained this, he must then determine what rates are fair and equitable for these improved lands instead of the old rates. Taking, for example, the Soona land according to the classification given above in § 73, if he finds that the productive powers of the land have been increased fifty per cent., the new rate—

	Rs.		Rs.		Rs.	
for improved first class Soona will be ...	5	+	2½	=	7½	per bigha.
„ improved second class Soona will be ...	4	+	2	=	6	„
„ improved third class Soona will be ...	3	+	1½	=	4½	„

When enhancement is claimed on the *fourth* ground.

If any particular ryot contends that this land, owing to its exceptional situation or other cause, has not been benefited to the same extent as other land, the Collector will not enter into this question, which must be left for determination in the proceedings taken to enforce the table of rates against the ryots individually. Finally, if enhancement is claimed on the *fourth* ground, namely, that the prices of produce have increased otherwise than by the agency or at the expense of the ryot, the Collector must ascertain the extent of the increase with reference to the terms of the law, and, dividing such increase according to the provisions of the Act, must determine the new rates, which shall be fair and equitable. Taking, for example, the Sali land according to the classification given above in § 73, if prices have doubled, and if the increase has occurred without the agency or expense of either the landlord or the ryot, the increment is to be divided equally, and the landlord will get half of it. The new rate will therefore be—

	Rs.	As.		Rs.	As.		Rs.	As.	
for first class Sali	4	0	+	2	0	=	6	0	per bigha.
„ second „	3	0	+	1	8	=	4	8	„
„ third „	2	8	+	1	4	=	3	12	„
„ fourth „	1	8	+	0	12	=	2	4	„

Table of rates when prepared to be published with notice that objections may be made within one month.

Collector's proceedings to be submitted to superior revenue authorities, who have full power to revise, amend or alter.

§ 77. The Collector having prepared the table of rates will publish it with a notice intimating to *the applicant* and the ryots that any objections which he or they desire to make to the rates must be made within one month by a written petition presented to the Collector. If any such objections are made, the Collector will consider them and amend the table, if he see fit. He will then submit the table of rates with his proceedings and any petitions of objection that may have been presented to the Commissioner, or, through the Commissioner, to the Board of Revenue. The Lieutenant-Governor may from time to time direct what cases shall be finally revised by the Commissioner or the Board, regard being had to the total amount of rents involved, or to the area of the lands or the number of the ryots affected. The Board or the Commissioner, as the case may be, may direct and await further proceedings or inquiries, may hear any person affected by the proceedings, may allow or reject any of the objections made, and may revise, amend or alter the table of rates (section 104).

Table of rates how to be used for settlement of rents.

§ 78. The table of rates, as finally sanctioned by the Board or the Commissioner, will be binding upon *the applicant* and the ryots, and will be conclusive to this extent that the rates therein specified are the fair and equitable rates payable for the classes of land specified in such table by ryots having a right of occupancy. *The applicant* will not, however, be able to recover rent from any individual ryot according to the rates specified in the table until it has been proved in a further proceeding, or the ryot has admitted that the lands held by him are lands of the same classes as those shown in the table. It has been asserted by persons of experience and ability that if rates were once settled by authority, landlords and tenants would soon be able to adjust their differences. If there is anything in this assertion, as soon as the table of rates is authoritatively promulgated, *the applicant* will be able to settle with the majority of the ryots, whose lands will in all probability fall within the classification of the table, and who will, therefore, have nothing to hope from a continuation of the contest. The residue will either have or conceive them-

Probability that it will enable the landlord and his tenants to come to terms amongst themselves.

selves to have just reasons for refusing to pay rent according to the table of rates. One may contend that he belongs to an old family or superior caste, who have always held their lands at a more favourable rate than the other ryots less (say) by two annas or four annas in the rupee. Another may allege that his grandfather or great-grandfather was in the service of the zemindar, and obtained his holding at lower rates with a promise that a difference should always be made in his favour. These allegations may be supported by the fact that the persons making them have been holding at lower rates than their neighbours. A *third* may aver that, owing to peculiarities of situation, his land has always been recognized as forming a sort of middle class not shown in the table, paying more than second class Sali, but less than first class Sali. A *fourth* may set up the plea that his fields lie on the edge of the *mát* or plain, and are liable to damage by cattle, in consequence of which he has always paid something less than the regular rate of the class to which these fields belong. A *fifth* may contend that the enhancement being claimed on the *third* ground, he was let into possession a couple of years ago, after the cause of the increase of the productive powers had produced its results, that he paid a large *salami* or fine in consideration of getting good land at a low rent, and that in justice and equity he cannot be bound by the table of rates. A *sixth* may raise a similar objection when enhancement is claimed on the fourth ground. Where these averments are just and reasonable, a prudent landlord will make a timely concession, and by agreeing to something less than the published rates will satisfy those ryots who have a claim to exceptional consideration; and thus *the applicant* may be enabled by the publication of the table of rates to come to terms with all his ryots.

If parties fail to come to terms, two courses open to the landlord.

§ 79. If, however, the ryots make unreasonable objections on the one hand, or the landlord will not yield to reasonable claims on the other hand, there are two courses open for the settlement of these individual grounds of dispute (section 106). *The applicant* may proceed in the civil court to enforce the table of rates against his ryots, and any number of ryots not exceeding ten may be made co-defendants in any such suit. The table of rates will be here conclusive to the extent already pointed out, but it will place the landlord in no better position as regards the burden of proof in other matters than if he had not gone to the Collector, but had in the first instance resorted to the civil court. Each individual ryot will thus have a full opportunity of bringing forward his own case and of procuring the decision of the court thereupon. The other course open to *the applicant* is to apply to the Collector for the preparation of an enhanced *jamabandi*, and this he may do at any time after three months (this affords time for an amicable settlement) and within one year from the date of the table of rates being finally sanctioned. From the exposition of the proceedings in preparing an enhanced *jamabandi* which follows, it will appear that here also the ryots will have a full opportunity of having their individual pleas heard and decided.

Application for an enhanced jamabandi in what cases.

Meaning of a "jamabandi"

§ 80. *The applicant* may ask the Collector to prepare an enhanced *jamabandi* of the estate, tenure, or under-tenure in respect of which the application is made, (1) by his original application, or (2) by a supplementary application after he has obtained a table of rates and has failed to settle with some or all of his ryots. We have defined (section 100) a "jamabandi" to mean a table or schedule, which exhibits—

(1) the names of the ryots in an estate, tenure, or under-tenure;
(2) the quantity of land, or, where such land consists of different classes, the quantity of each class, held by each ryot;
(3) the total rent payable by each ryot for the total land of each class held by such ryot; and
(4) the grand total of rent payable by each ryot.

Meaning of "enhanced jamabandi."

We have defined an "enhanced jamabandi" to be a jamabandi which, in addition to the above particulars, further exhibits—

(*a*) when enhancement is allowed on the *first* ground,
    (5) the prevailing rate of rent allowed for any class of lands instead of the rate previously payable;
    (6) the new total rent payable, in consequence, for all the land of such class held by each ryot, and
    (7) the new grand total of rent payable by each ryot:

(*b*) when enhancement is allowed on the *second* ground.
(5) the additional land of each class proved to be in the possession of each ryot;
(6) the new total rent payable, in consequence, for all the land of such class held by each ryot, and
(7) the new grand total of rent payable by each ryot:

(*c*) when enhancement is allowed on the *third* or *fourth* ground,
(5) the enhanced rate of rent allowed for each class of land;
(6) the new total rent payable, in consequence, for all the land of such class held by each ryot; and
(7) the new grand total of rent payable by each ryot.

It will be obvious at a glance that a jamabandi or enhanced jamabandi, unlike a table of rates, deals with the particulars connected with each individual ryot.

Application for an enhanced jamabandi what to include.

Enhanced jamabandi to be published with notice to ryots to appear and assent or object to the entries concerning them.

§ 81. *The applicant* who asks for an enhanced jamabandi must with his application present a copy of the enhanced jamabandi, which he alleges to be fair and equitable, and according to which he claims to collect enhanced rents from the ryots; and he must further distinctly specify the ground or grounds upon which he claims to enhance the rent of each ryot specified therein. The entry of any ryot's name in this copy will be an admission by the landlord that such ryot has a right of occupancy. The enhanced jamabandi presented by *the applicant* will be published in the same manner as the table of rates (*ante* § 77) on the land, with a notice to the ryots to appear within one month and assent individually to the entries concerning each of them, or state their objections, if any, to such entries. Any ryot may here put forward by way of objection everything connected with his own particular case.

Procedure if all the ryots assent.

Procedure if all or any of the ryots object.

§ 82. If all the ryots concerned agree to all the entries in the copy of the enhanced jamabandi presented by *the applicant*, the Collector shall make an order declaring such jamabandi to be binding upon *the applicant* and the ryots for ten years, subject, however, to enhancement for alluvion and abatement for diluvion. If any or all the ryots object, or if they do not appear and assent, the Collector will proceed to prepare an enhanced jamabandi for the estate, tenure, or under-tenure. In order to do this he must first obtain the information necessary to prepare a table of rates in those cases in which such a table has not been already prepared, and he must then apply these enhanced rates to the cases of particular ryots, dealing with the peculiar circumstances of each case, and the objections, if any, made by each ryot.

Collector to draw up a statement of his proceedings. Enhanced jamabandi when prepared to be published.

Collector to deal with objections made by individual ryots.

Appeal to Commissioner.

Protection of ryots who pay rent to the applicant under the enhanced jamabandi.

§ 83. When the Collector has concluded these proceedings he will draw up a statement thereof and prepare the enhanced jamabandi (section 109), which will then be published with a notice intimating to *the applicant* and the ryots that any objections which he or they may desire to make to the rates or entries in such enhanced jamabandi must be made within one month after such publication by a written petition to be presented to the Collector. If any objections are made—and it may be observed that these objections may be on all points connected with each ryot's individual case—the Collector is to deal with them. In order to satisfy himself of the correctness of such objections or otherwise, the Collecter may take such further proceedings as appear necessary, and may therein exercise the same powers as he was competent to exercise in the original proceedings; and he may make any order which he deems proper either cancelling, amending, or otherwise altering any such rate or any such entry, or rejecting such objection. Any landlord or ryot affected by such order may, if dissatisfied therewith, prefer an appeal to the Commissioner within thirty days, and the Commissioner may upon such appeal, after or without further inquiry, make such order as to him appears proper (section 110). The enhanced jamabandi finally prepared after all the objections are disposed of will be binding on the landlord and the tenants for ten years, subject to enhancement for alluvion and abatement for diluvion. In order to prevent ryots who pay their rents to *the applicant* according to the enhanced jamabandi from being harrassed by suits brought by rival landlords, we have enacted (section 111) that no ryot who is compelled to pay rent to *the applicant* according to the enhanced jamabandi shall be liable in a suit for mesne profits to any third party claiming to be entitled to such rent, but any such suit small be maintainable against *the applicant* alone.

Proceedings to obtain a settlement jamabandi.

Cases to which this procedure is applicable.

§ 84. We now come to the third class of proceedings, namely, proceedings to obtain a settlement jamabandi, which we have defined to be a jamabandi prepared by the Collector upon the application of a landlord who is unable to ascertain the ryots liable to pay rent to him, the rents payable by such ryots, or the plots of land in respect of which such rents are payable by each of such ryots. We have already (*ante* § 65) alluded to the difficulties under which a purchaser at a public sale labours when he endeavours to take possession of an estate which he has purchased. The former owner intrigues with the ryots to put obstacles in his way. Either the object of the purchaser is to make a profit by enhancing the rents, or this object is imputed to him. The old proprietor withholds all information and all papers. The ryots understate their rents and produce fabricated receipts purchased from former gomastas, or perhaps even signed by the old proprietor in the hope that the purchaser will repent his bargain and make overtures to get rid of it. The quantity of land in each holding is untruly stated, or all information is refused. If the purchaser attempts a measurement, no one will say to whom the plots or fields belong. Individual suits cannot be brought, for the purchaser has not sufficient information to draft a plaint in a single case. All this may happen, not only when the new landlord is a purchaser at a revenue sale or at an execution sale, but also in the case of a succession, when some person, who undoubtedly has the law on his side, is opposed by the female or other members of the family of the late owner, who conceive that they have rights which ought to be respected.

Applicant for settlement jamabandi to set forth the circumstances in his application.

§ 85. *The applicant* who, under this state of things, applies to the Collector for a settlement jamabandi must in his application set fourth the circumstances under which he is unable to ascertain the ryots liable to pay rent to him, the rents payable by such ryots, or the plots of land in respect of which such rents are payable. The Collector, if satisfied that *the applicant* is really unable to ascertain these particulars, and that, in consequence, proceedings for the preparation of a table of rates or an enhanced jamabandi could not be inaugurated or would be useless, may proceed to prepare a settlement jamabandi. The first step towards doing this is the issue of a notice calling upon the ryots in the estate, tenure or under-tenure to appear within one month and state the plots of land held by each of them, together with the class, quantity, and boundaries thereof, the rent previously paid for such land, and the rent which they are each of them willing to pay.

If ryots do not furnish required particulars or if applicant object to particulars furnished, Collector to proceed to ascertain and determine what matters.

§ 86. If within one month after the publication of this notice the ryots appear and give the particulars required of them, and *the applicant* assents to these particulars, the settlement jamabandi will be drawn up accordingly. If they do not appear and furnish the particulars required of them, or if they furnish particulars which *the applicant* objects to, the Collector will proceed to ascertain and determine (1) who are the ryots liable to pay rent to *the applicant;* (2) what are the lands for which such rents are payable; (3) what rights such ryots have in such lands; and (4) what are the rents or rates of rent, either in excess of the former rents or rates or otherwise, which *the applicant* is entitled to receive from such ryots for such lands (section 113). When the settlement jamabandi is completed, the Collector will publish it in the same way as an enhanced jamabandi, with a similar notice to the ryots concerned. The Collector will deal with any objections that may be made by individuals, and, if dissatisfied with his orders, they can appeal to the Commissioner.

Any number of landlords may join in an application. Collector may direct separate proceedings if he see fit.

Considerations which should guide the exercise of this discretion.

§ 87. Having thus explained the main features of the proceedings before the Collector in the three classes of cases for which we have attempted to legislate, we shall now notice certain general provisions common to all three. And, first, we have allowed any number of landlords to join in an *application*, specifying the proportions in which they are willing to pay the costs; but the Collector may, if he see fit, direct that separate proceedings be held in respect of any estate, tenure, or under-tenure, or specific area belonging to any *applicant* (section 115). As to the considerations which should guide the Collector in making such an order, the causes which afford grounds of enhancement sometimes affect considerable areas with scarcely any perceptible difference in their effects. This is notably so in the case of a rise in prices. Economy in the employment of the necessary agency and in making the necessary inquiries will be effected by including in a single investigation a number of landlords and tenants who have the same stake in the questions to be settled. In preparing a table of rates, where the particulars of individual cases have not to be inquired into, a larger number of persons can safely be included in the proceedings than in preparing an enhanced jamabandi or a settlement jamabandi, where the particulars of individual cases have to be dealt with. Two or more under-tenures within the same tenure, or two or more tenures within the same estate, may well form the subject of a single investigation; while tenures situate within different and distant estates, and affected by different circumstances, ought to be treated separately. The great object in every case should be not to make the inquiry too unwieldy, and not to attempt to treat together areas which are not susceptible of similar treatment.

Collector may, if he see fit, endeavour to bring about an amicable compromise.

§ 88. We have provided (section 116) that in any case in which an application is made to him, the Collector may, if he see fit, before proceeding to determine or settle the matters in dispute, endeavour to bring about an amicable compromise between *the applicant* and the ryots; and that, if any such compromise is brought about, the Collector shall draw up a formal record of its terms, and such record shall be binding upon all persons mentioned therein. We have borrowed these provisions from the expired *Agrarian Disputes Act* VI (B.C.) of 1876.

Deposit of money upon the requisition of the Collector to meet the expenses of the proceedings.

§ 89. We have provided that *the applicant* shall from time to time, when so required by a written notice, deposit such sum of money as the Collector may estimate to be necessary to carry on the proceedings. When there is a single *applicant*, and he fails to comply with such a requisition within fifteen days after its being made, the Collector may order the proceedings to abate, or he may in his discretion receive the deposit after the fifteen days have expired. Where there are more *applicants* than one who have joined in respect of different estates, tenures or under-tenures, the Collector may receive so much of the amount as is required for any particular estate, tenure or under-tenure, and proceed with the inquiry so far as it is concerned, making an order of abatement as to the other or others in respect of which no deposit has been made. When the *applicants* are coparceners, one may deposit the whole amount required, and recover from any other coparcener the share which should have been deposited by him. When an order has been made that the proceedings do abate, no fresh enhancement proceedings may be instituted for ten years (section 118 .

Consequence of failure to deposit.

Powers exerciseable by a Collector for obtaining evidence in the course of his proceedings.

§ 90. We have enacted (section 121) that the Collector may in his discretion, at any stage of his proceedings, exercise all or any of the powers of a civil court in respect of summoning, causing the attendance of, and examining witnesses, whether parties to the proceedings or not, and in respect of causing the production of documents, and giving or apportioning costs; and the provisions of *The Code of Civil Procedure* applicable to these matters shall apply to a Collector exercising such powers. We have also provided that a Collector may, with the consent of the parties, refer any matter to arbitration, and that the provisions of *The Code of Civil Procedure* concerned with arbitration shall be applicable.

Reference to arbitration.

Annual price lists to be prepared by Collectors of districts and published in the *Calcutta Gazette*.

§ 91. In order to facilitate inquiries into the increase or decrease of prices as a ground of enhancement or abatement of rent, we have provided (section 122) that the Collector of every district shall prepare annual lists of the prices at harvest time of the staple crops appointed by the Board of Revenue for districts or other areas (see clause (c) of section 23). These price lists will be prepared under rules made by the Board in order to secure uniformity, and will be published annually in the *Calcutta Gazette.* We have declared that any price list so published shall be relevant in any proceedings, under Chapter XV, and shall be *primâ facie* evidence of the price of such staple crops during the year, and in the district or area for which it has been published. The areas for which these lists will be drawn up will be determined by the Board of Revenue upon the recommendation of the Collector. The prices at certain fixed marts should be taken, the same marts being always adhered to. The price of produce in the field where it is grown varies according to the distance of the usual market and the necessary cost of carriage thereto. The price in different markets varies according to their proximity to larger markets or ports of export, and the facilities for carriage to such ports or market. By taking always the prices of the same markets, the normal variation, as affected by external and general, as distinguished from local and particular, causes, is more likely to be obtained.

To be *primâ facie* evidence in enhancement proceedings.

Power of Collector to make measurement and direct the ryots to be present.

Consequence of non-attendance.

§ 92. We have provided (section 123) that the Collector may in his discretion, at any stage of the proceedings, make a measurement of all or any of the lands with which such proceedings are concerned, and may make an order, which shall be duly published, directing the ryots to be present at such measurement. Any ryot who, after the publication of such order, fails to attend and point out his land, shall be estopped from contesting the correctness of the measurement made or any of the proceedings held in his absence. If after due inquiry the Collector is unable to make a measurement or ascertain the names of the ryots or other persons holding the lands, he may declare such lands to be at the absolute disposal of the zemindar. If any ryot appears within fifteen days after the Collector has recorded such a declaration and shows reasonable cause for his previous non-appearance, the Collector may, upon such terms and conditions as to him appear proper, alter or rescind his previous declaration. If no such reasonable cause is shown, the Collector may make an order, refusing to alter or rescind such declaration, and from such order an appeal will lie to the Commissioner. These provisions will be found useful and necessary in the third class of proceedings, namely, those held for the preparation of a settlement jamabandi. It is to be observed that they are not new, similar provisions having been enacted by Act VI (B. C.) of 1862, and being still found in Act VIII (B. C.) of 1869.

Any person may be invested with powers of a Collector for the purposes of the Act.

Deputy Collector may exercise powers subject to control of Collector.

Appointment of ministerial officers, &c.

§ 93. We have provided (section 124) that the Lieutenant-Governor may invest any person with the powers of a Collector for the purposes of Chapter XV, and may give such directions as appear convenient for dividing between such person and the Collector of the district the work arising under the Act; and that any Deputy Collector may, subject to the control and supervision of the Collector of the district, or of any person so invested with the powers of a Collector, exercise (with some few exceptions) all or any of the powers vested in a Collector by Chapter XV. The Collector is empowered to exercise this control and supervision either of his own motion or upon petition by any one alleging himself to be aggrieved. We have provided that the Collector may, subject to rules to be made by the Board of Revenue, appoint such ministerial and other officers as may be required to make such inquiries, and to do all such things as may be necessary to carry out the provisions of the Act.

Rules as to the cost of the proceedings.

Certified copies.

§ 94. Upon the termination of the proceedings the Collector will draw up an account of the total cost. If the amount deposited by *the applicant* covers this cost and leaves a balance, such balance will be refunded. If there is a deficiency, it will be recoverable as a public demand. In the cost of the proceedings will be included (*a*) the salary and allowances of the Collector or Deputy Collector by whom the proceedings have been conducted; (*b*) the salaries of the ministerial officers; and (*c*) all contingent and other expenses actually incurred. A discretion is given to Commissioners and Collectors to direct, when rejecting an objection or appeal, that the immediate costs thereof be paid by the person making such objection or appeal, or by any party who opposes the same. When *the applicant* in proceedings for an enhanced jamabandi is found entitled to enhanced rent, the Collector may award to him costs payable by the ryots; but no ryot shall be liable to pay as costs a greater sum than one year's enhanced rent, and such costs may be made payable by instalments. Unpaid costs are recoverable as arrears of rent (section 128). Every person affected by the proceedings is declared to be entitled to a certified copy of the Collector's statement, and of any table of rates, enhanced jamabandi, or settlement jamabandi prepared by the Collector, such copy to be made at his expense. A ryot is entitled to receive a certified copy of so much of any jamabandi as concerns himself upon payment of a fee of four annas which will cover all charges.

Transfer of cases instituted in large numbers, by Civil Court to Collector.

§ 95. We have provided (section 130) that when any considerable number of cases has been instituted in a civil court by one or more landlords against ryots holding land in the same locality, and it appears to such court desirable that all such cases should be disposed of by the Collector, the civil court may make a recommendation to this effect to the District Judge to which such court is subordinate, and the District Judge may, if he see fit, transfer such cases to the Collector, who shall proceed thereupon as if an application had been made to him in the first instance. The object of this provision is to secure economy of judicial power, when landlords, instead of applying to the

Collector, bring a number of separate suits against individual ryots, and also to obtain the advantages of a general inquiry into matters in which a number of persons are interested.

Power of Collector to act *suo motu* for settlement of rents.

§ 96. As a substitute for the expired *Agrarian Disputes Act*, 1876, we have enacted (section 131) that if the Collector of a district is of opinion that, in consequence of a serious dispute likely to lead to a breach of the peace having arisen upon the subject of rent in a considerable area of his district, it is expedient that proceedings should be taken to settle the rents payable by the ryots to their landlords within such area, he may record his reasons for entertaining this opinion, and may forward them, through the Commissioner, for the consideration of the Lieutenant-Governor. The Lieutenant-Governor, if satisfied of the expediency of taking such proceedings, may authorize such Collector to proceed of his own motion to settle such rents, and the Collector shall then proceed as if an application has been made to him by the persons concerned.

Alternative courses, if the introduction of the previous scheme in its entirety be thought likely to involve too great and sudden an increase of revenue agency.

§ 97. Such is the procedure which we have devised for the enhancement and settlement of rents. According to its provisions the Collector is bound to take action upon an application presented to him. It is very probable that if these provisions become law, additional agency will be required in the Revenue Department. How far this requirement can be met by reduction in the department of the civil courts rendered possible by diminished pressure in that quarter, it is not easy to anticipate, and is not probably within the sphere of our duties to forecast. We think, however, it will be well to mention what alternative courses we consider possible, if it be thought undesirable to give immediate effect to the scheme in its present shape and in its present entirety. *First*, the provisions of the Enhancement Chapter (XV) might be not brought into general operation at once, but might be made extendible to any particular district by a notification to be published in the Gazette. *Secondly*, the preparation of a table of rates only might be made compulsory upon the Collector, the application of this table to individual cases being imposed upon the civil courts. *Thirdly*, the Collector's agency might be called in only when the District Judge certified to its being desirable in consequence of a considerable number of cases being instituted from any portion of the district. *Fourthly*, landlords might be restricted from using the revenue courts for less than a particular and considerable number of cases.

Cases for enhancement of the rent of tenures and under-tenures to be instituted in the civil courts.

§ 98. We have provided (section 132) that cases for the enhancement of the rent of tenures and under-tenures shall be instituted and conducted in the civil courts, and that all the provisions of *The Code of Civil Procedure* shall be applicable to them. The plaint here also must, in order to effect the rent of the following year, be presented at least four months before the expiry of the year. The court has full power to decide all questions arising between the parties, and may declare the landlord entitled to the enhanced rent claimed, or any less rent that may be found fair and equitable.

Occupancy ryot entitled to abatement of rent on what grounds.

§ 99. We have provided that, subject to those provisions which make a table of rates or an enhanced jamabandi binding for ten years, a ryot having a right of occupancy is entitled, on any one or more of the following grounds, to an abatement of the rent payable by him in money, namely,—

(1) on the ground that the quantity of land held by such ryot has been shown by measurement to be less than the quantity for which rent has been previously paid by him;

(2) on the ground that the productive powers of the land held by such ryot, as compared with such powers at the time when the rent was fixed, or at any subsequent time, have decreased from some cause beyond the ryot's control, and not merely temporary or casual;

(3) on the ground that the prices of produce in the locality or at the usual markets, as compared with similar prices at the time when the rent was fixed or any subsequent time, have decreased from some cause beyond the ryot's control, and not merely temporary or casual.

The above three grounds are the converse of the second, third and fourth grounds of enhancement. The first ground of enhancement finds no such converse, and we have here retained the existing law under which an occupancy ryot is not entitled to claim an abatement of the rent previously paid by him on the ground that such rent is higher than the prevailing rate paid by ryots of the same class for land of a similar description and with similar advantages in the places adjacent.

Suits for abatement of rent by occupancy ryots in what court to be instituted;

by tenure-holders or under-tenure-holders where to be instituted.

§ 100. A suit for abatement of rent by an occupancy ryot may be instituted (1) when abatement is claimed on the first or second of the grounds stated in the last paragraph in the civil court or before the Collector; (2) when abatement is claimed on the third of these grounds, before the Collector only. But no such suit can be instituted before the Collector unless ten ryots at least join in bringing it: and we have declared that ten or more ryots paying rent to the same landlord may join in bringing any such rent, even although their holdings are separate and distinct. Suits for abatement of rent on account of diluvion or other cause brought by tenure-holders or under-tenure holders must, when maintainable, be instituted in the civil court, and the provisions of *The Code of Civil Procedure* are applicable thereto.

Ryots who have held land for three or more but less than twelve years. Chapter IV the result of a compromise.

§ 101. Chapter IV treats of ryots who have held land for three or more but less than twelve years. This Chapter is the result of a compromise between different views entertained by members of the Commission. Messrs. Mackenzie[1] and O'Kinealy are in favour of reducing from twelve to three years the period necessary to acquire a right of occupancy. Messrs. Dampier and Field would in this respect make no change in the law of 1859, believing that the number of persons likely to be benefited is not so large, or the amount of benefit likely to be conferred so great, as to compensate for the unsettling of present ideas, the disturbance of existing rights, and the consequent litigation that would probably be the result of such a new provision. In the view that there is no necessity for any change in the direction indicated, the two last mentioned members of the Commission would prefer to have Chapter IV struck out of the Bill altogether. We proceed to notice the provisions of the Chapter.

Three years' ryots protected from eviction, except in certain cases.

Demand of enhanced rent.

Such ryot, declining to keep land at higher rate demanded, entitled to compensation for disturbance.

§ 102. It is provided (section 26) that a ryot who, for a continuous period of three or more, but less than twelve, years has a tenant occupied and cultivated, or has as a tenant held, land other than *khamar*, *nijjote*, or *sir* land let on lease for a term or year by year, shall not be evicted from such land by the landlord thereof otherwise than (*a*) for non-payment of rent, or (*b*) for a breach of some condition of his lease which expressly provides that eviction shall be the penalty of such breach, or (*c*) for refusal to pay an increased rent demanded by this landlord. A demand for increased rent is not limited by any of the provisions of the Bill, but notice of such demand must be given to the ryot at least three months before the end of the year. If the ryot after receipt of such notice elects to continue in possession of the land, he will be liable for the higher rent demanded. If he is unwilling to keep the land at the higher rent demanded, he can give his landlord notice of his intention to relinquish it, and he will be entitled to receive as compensation for disturbance one year's rent at the higher rate demanded by the landlord. If the landlord fails to pay such compensation within the first month of the ensuing year, the ryot shall be entitled to hold on at the old rent.

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[1] Mr. Mackenzie's views are thus stated in the following paragraphs of a Note dated 20th January 1880 submitted by him to the Commission, and which will be found in our proceedings:

"I have already shown that the framers of Act X considered that *every resident ryot* had a right of occupancy, and that it was not intended to injure his position in any way. I have urged that his position has been injured by the 12 years' clause of that Act, and in this opinion I have the support of the majority of revenue officers throughout Bengal. It is no sufficient remedy to say that the new Bill will not infringe on any term of prescription recognized by local custom. We want an easy means of determining when a ryot may or may not be arbitrarily ejected. If it is impossible now-a-days to say that no 'resident' ryot shall be so ejected, because village residence and village and tillage do not now run together, then I say take the spirit of the old law and protect *every* ryot who gives reasonable proof of his intention to cultivate permanently the lands on which he is settled. Three years' tillage seems to afford such reasonable proof. This was the term proposed in the original draft of Act X as conferring rights of occupancy on resident ryots in lands not previously in their occupancy and for which they had no pottah.

"I cannot admit the force of Mr. Field's objections to this. I do not see that such a provision would lead to litigation. On the contrary, it would prevent the litigation sure to arise if Mr. Field's proposal to leave everything to local custom is adopted. It would go far to do away with the erroneous idea that by occupying for 12 years a man is entitled to be charged a lower rent than his neighbour for the same class of land. It does not limit injuriously the zemindars' rights, for it simplifies their relations with their ryots and puts the question of enhancement upon a uniform basis for the great mass of the ryots without distinction of class. It is desirable on political grounds, for it recognizes the title of the great body of the cultivators to the quiet possession of their fields. In so doing, and taken in connection with the proposal that the State should directly regulate enhancement, it widens the basis of agricultural prosperity, diminishes risks from famine, and tends to create a substantial tenant right without detracting from the value of that property which the zemindars have by prescription (though to a great extent in the teeth of law and justice acquired, and of which it would now be folly to attempt to deprive them."

Mr. Mackenzie is not in favour of Chapter IV, if every cultivator, who has practically shown himself to be a settled or resident cultivator by three years' occupation is protected against arbitrary ejectment so long as he pays the established rates of the neighbourhood for occupancy ryots.

Mr. Field's views are embodied in his Note of the 13th January 1880, which will also be found with the proceedings.

Such ryot, if evicted on any of the above three grounds, also entitled to compensation for improvements.

§ 103. Any such ryot who is evicted on any of the three grounds above-mentioned, is also declared to be entitled to receive compensation for any improvements made by him upon the land at any time while he cultivated or held it. We have defined the term "improvements" to mean works by which the cultivation of land has been lastingly facilitated, or the productive powers of land have been lastingly increased, and to include—

(*a*) the erection of a dwelling-house and offices suitable for the habitation of a cultivating ryot;

(*b*) the making of tanks, wells, and other works for the storage, supply, or distribution of water for agricultural purposes;

(*c*) works for the drainage of land, or for the protection of land from floods, or from erosion or other damage by water;

(*d*) the reclaiming, clearing, or enclosing of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto;

(*f*) the planting of fruit trees.

Civil court may assess compensation for improvements, if parties cannot agree.

§ 104. The landlord and tenant may agree on the amount and mode and time of payment of this compensation for improvements. If they cannot agree, the civil court may determine the amount, and in so doing shall take into consideration the following principles:—

(*a*) The amount of the ryot's compensation in respect of an improvement shall be the sum laid out by the ryot on the improvement with a deduction of a proportionate part thereof for each year while the tenancy endures after the year of tenancy, in which the outlay is made, and while the improvement continues unexhausted.

(*b*) In determining the amount of compensation in respect of an improvement, there shall be taken into account in reduction thereof any sum reasonably necessary to put the same into good repair or condition.

(*c*) Any deterioration of the holding caused by the act of the ryot shall be taken into account.

Decree to be made for amount of compensation.

The civil court, having determined the compensation, shall make a decree for the amount. If such amount does not exceed fifty rupees, the decree will be final and conclusive (section 30).[1]

Three years' ryot may claim abatement of rent, and, if landlord refuse, may relinquish land and claim compensation.

§ 105. We have provided (section 31) that a ryot of the class now under notice may claim abatement of the rent payable by him in money on any of the grounds on which an occupancy ryot may claim abatement; and that, if the landlord is unwilling to allow the abatement to which ryot is found to be entitled, the latter may relinquish the land and claim compensation, the measure of which shall be one year's rent at the rate from which the landlord declined to allow an abatement.

Ryots who have held land for less than three years.

Eviction of such ryots.

Ryot let into possession for a fixed term of less than three years, and holding over without permission.

§ 106. Chapter V treats of ryots who have held land for less than three years, and to these it is not proposed to give any special privilege or protection. They hold at the will of the landlord, but they may not be evicted otherwise than through the court and upon a reasonable notice. No such ryot may sue for determination of the rent which he is to pay in future, or for abatement of rent: this follows the decisions, and is the natural result of his position as a tenant-at-will. A landlord desiring to eject any such ryot must serve him, through the civil court,, with a notice to quit at least three months before the expiry of the year preceding that in which he desires to resume possession of the land. If the ryot does not give up the land from the first day of the year next ensuing after service of notice, the landlord may within three months bring a suit to evict him, and, when such a suit has been instituted, the time during which the ryot continues to hold on cannot be added to previous time, so as to give the ryot the advantage of the improved position conferred by the Act on ryots, who have held for more than three years. If a decree for ejectment is ultimately passed against the ryot, he is further made liable for the full letting value of the land for the time during which he has wrongfully retained possession, and for any damages sustained by the landlord in consequence of being kept out of possession of the land (section 34). We have made the same provisions applicable to a ryot, who having been let into possession for a term less than three years refuses to give up the land upon the expiry of such term, and has not the consent, express or implied, of his landlord to hold over. We trust that these express provisions upon points as to which the present statute-law is silent, and for which the decisions have not provided a sufficient guide in the case of ryots not having a right of occupancy, will be found equitable and calculated to prevent litigation in future.

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[1] In drafting these provisions as to compensation, we have utilized *The Oudh Rent Act* XIX *of* 1868, sections 22-26: *The North-Western Provinces Rent Act* XVIII of 1873, sections 44-47; *The Landlord and Tenant* (*Ireland*) *Act*, 1870, 33 and 34 Vic., Cap. 46, sections 3-14; and *The Agricultural Holdings* (*England*) *Act*, 1875, 38 and 39 Vic., Cap. 92.

Thee years' ryot not liable to enhancement without notice, unless he has made a written agreement to pay higher rent.

§ 107. In order to settle another point which has occasioned some difficulty in the case of ryots not having a right of occupancy, we have provided (section 35) that a ryot who has held for less than three years shall not be liable to pay a higher rent unless he has made a written agreement to do so, or unless a notice demanding such higher rent has been served on him at least three months before the expiry of the year preceding that for which such higher rent is demanded. Such notice must set forth the grounds upon which such higher rent is demanded, but these grounds are not to be limited by anything in the Bill. If the ryot is unwilling to pay the higher rent, he may relinquish the land. If he does not relinquish it, he will be liable to pay the higher rent, but not so as that he shall pay more than double the former rent. Following the case-law we have enacted, by way of explanation, that when any such ryot is served with a notice to quit *or* pay a specified increased rent, and he elects to remain in possession of the land, the tenancy cannot be treated as determined, and the notice must be taken as a notice to pay the higher rent thereby demanded.

Legislation upon the subject of land used for building purposes.

§ 108. The majority of us are of opinion that it is expedient to legislate upon the subject of land used for building houses and similar purposes as well in agricultural villages as in towns. We believe that the non-agricultural population has increased and is increasing, and that even away from towns and cities there is, in rural villages, a considerable number of persons who, though holding no land used for agricultural purposes, occupy, and in many cases have for years occupied, a site for their dwelling-house. The trading class, whom it is desirable to encourage, the *mahajan*, the shop-keeper, require land for their houses, shops and *golahs* or granaries. The zemindar in some places receives a higher rent for the land, *bastu, udbastu,* used for these purposes; and the construction of a new village, or the extension of an old one has usually been a recognized source of legitimate profit. We think it reasonable to protect the zemindar, on the one hand, in the enjoyment of this source of increased income where it exists, and the tenant, on the other hand, from the contingency of arbitrary eviction. A successful tradesman or handicraftsman has usually a great desire to erect a *pukka* or brick-built house, but the difficulty of getting a good title to the piece of land required for the site deters him from expending his money lest he should afterwards be ejected. In cases of ejectment leave is usually given to remove the materials, but in the case of a newly-constructed brick-built house this is somewhat of a mockery. We believe that nothing contributes more to raise the standard of comfort amongst a community than the erection and use of comfortable dwellings, and we have accordingly endeavoured to afford facility and encouragement to this improvement as well amongst the agricultural as the non-agricultural class.

Ryot may erect brick-built or other suitable residence upon his holding for his own use;

but may not use the land to build houses for third parties.

§ 109. We have, in the first place, provided that in the case of land used or let to be used for agriculture, horticulture, pasture or other similar purpose, a ryot may not, without the permission of his landlord, use any portion of such land for building or any other purpose inconsistent with that for which it was previously used or let to be used; but that a ryot may, without his landlord's permission, erect upon his holding a brick-built or other dwelling-house suitable for the use and occupation of himself and his family, together with such outhouses and offices as may be necessary thereto. The effect of this will be that, although a ryot will be authorised to erect a suitable and comfortable residence for himself, and will be protected if he does so, he will yet have no right to erect a *pukka* shop or manufactory on his land, or convert his holding into building sites for houses to be occupied by third parties. If a new town or village springs up and arable land is required for building purposes, the right-of-occupancy ryot cannot appropriate the whole of the increased value which would be given to the land by its being used for building purposes, for without the landlord's permission he cannot use it for these purposes. The landlord is equally unable to appropriate the whole of this increased value, for, as the ryot is in possession and cannot be evicted, he cannot let the land to a third person who may desire to build upon it. As, therefore, building operations cannot be commenced without the consent of both landlord and ryot, and as it is for their mutual benefit that some arrangement should be made for the division of the increased value, it is reasonable to expect that self-interest will lead to the making of such an arrangement, the result of which will be that both the persons whose united interests constitute property will share in the increase of value (see section 36 of the draft Bill).

Procedure if ryot changes the use of the land without the landlord's permission; and landlord is diligent in asserting his rights.

§ 100. If the ryot without obtaining the permission of his landlord begins to change the use of the land, the landlord may serve him with a notice requiring him to desist. If the ryot does not attend to this notice, the landlord may then go to the civil court and obtain a mandatory injunction. If the ryot does not obey this injunction, he may be ejected by the civil court, and may be required to pay, by way of damages, a sum sufficient to restore the land to its former condition. Messrs. Mackenzie and O'Kinealy object to the ryot being made liable to ejectment, but a majority of us consider this sanction advisable. It is to be observed that, if the ryot claims to be entitled on other grounds to change the use of the land, he can put this claim forward as a defence to the landlord's suit for a mandatory injunction. Having thus afforded him an opportunity of contesting the justice of the landlord's position, we think it not unreasonable to say that if, having paid no attention to the landlord's notice in the first instance, he further persists in treating the court's injunction with contempt, he may be ejected (section 38 of the draft Bill).

Procedure where landlord sleeps over his rights.

§ 111. Owing to the uncertain state of the law many ryots entertain a *bonâ fide* belief that they may build as they please upon their land. We have therefore provided that when a ryot begins to change the use of his land, and his landlord not being diligent in looking after his property delays to serve him with notice to desist and to follow it up by obtaining a mandatory injunction, even if such an injunction is afterwards obtained, the ryot shall not be liable to eviction, and he shall be entitled to compensation for loss sustained by him in consequence of his having to remove any buildings or works erected by him before he received notice to desist. This, it will be observed, is a different case from that which follows, and where the ryot is able to show that his landlord was aware of what he was doing, and being aware stood by in silence and allowed him to expend his money on building or other works. It may be said that, if this Bill be passed, the state of the law will no longer be uncertain, and the ryot will be aware that he has no right to build except for his own residence; that, therefore, if he builds in violation of the law, it is not reasonable to give him compensation for taking down a building which he has erected without a shadow of right. To this it must be replied that in these matters of private right depending upon civil enactment and not involving a violation of the law of nature, we think that the maxim—*Ignorantia juris non excusat*—has been pushed too far. Whatever presumption there may be in these provinces that an educated zemindar knows the laws made by Government and published in the *Gazette*, this presumption is very much less in the case of the illiterate ryot. In this view we make a great difference between the case of the landlord who in this matter is watchful of his rights and prompt to enforce them, and the case of the landlord who is remiss and inattentive in the management of his property.

Landlord estopped from objecting to the use of the land being changed in certain cases.

§ 112. But there is a third case, namely, where the landlord, being aware that the ryot has begun to change the use of the land, makes no objection and allows him to go on expending his money on building or other work. In this case and also where the landlord has for two years given no notice to desist—and here it is immaterial whether he was or was not aware—we have provided that the landlord shall be estopped from afterwards objecting to the change in the use of the land. To those who regard a ryot having a right of occupancy from the stand-point of the English law of landlord and tenant, we shall not be surprised if some of these provisions appear objectionable; but if the ryot be admitted to have certain rights in the land, the judgment pronounced upon them will be different.

Right of occupancy may be acquired in land used for building or other similar purposes. Nature and incidents of this right of occupancy.

§ 113. When land has been costomarily used, or has been let to be used, for building or for any purpose other than agriculture, horticulture, pasture, or the like, we have provided that a tenant who has been in the immediate possession thereof for the full period of twelve years shall, in the absence of a contract to the contrary, acquire a right of occupancy therein, and shall not be liable to be ejected. We have, however, thought that this provision should not be made retro-active, and no time antecedent to the commencement of the Act can, therefore, be reckoned in the computation of the twelve years required to create this right of occupancy. The interest so acquired has been declared to be heritable, transferable, and devisable, and also liable to sale in execution of any decree of the civil court. If the tenant does not pay his rent the landlord may bring the land, together with any buildings thereupon, to sale in execution of any decree obtained for arrears of such rent (section 41 of the draft Bill). We have further provided that the rent of any such holding, if not enhanced during the previous ten years, may be enhanced so as to be equal to the rent paid by other tenants for land in the neighbourhood having similar advantages and used for similar purposes, or so that it may be equal to five per centum of the market value of the land (section 42). We trust that these provisions will in course of time settle the mutual rights of landlords and tenants of land occupied with buildings.

Doubts as to the applicability of the doctrine of Merger removed by express provisions.

§ 114. Whether the doctrine of Merger applies in the Mofussil is a question upon which the decisions of the highest tribunals are not of one accord. Any doubt as to the state of the law on a point like this is certain to create litigation, which can be prevented by making the law clear and indubitable. In a country where there are so many interests intermediate between the *zemindar* at the top and the cultivator at the bottom, it is especially important that it should be known exactly what consequences ensue when the zemindar or the owner of any intermediate interest acquires the interest immediately subordinate to his own. We have provided (section 43) that when by purchase at private or public sale, or by gift, succession, or will, the proprietor of an estate becomes the owner of a tenure in such estate, such tenure shall, unless such proprietor can show that he had a contrary intention, be presumed to be merged in the proprietary interest and extinguished by the fact of the same person being owner of the estate and the tenure. The same provision is made applicable to the owner of any superior interest acquiring the interest immediately subordinate thereto (section 44). We have here followed the principle of equitable Merger which is governed by the intention (if it be a just and fair intention) of the person in whom the two interests unite, and by the purposes of justice. Having regard to the frailty of oral evidence in this country, we have, however, cast upon the person in whom the interests meet the burden of shewing an intention to keep them separate by producing a duly registered deed declaratory of such intention, and by proving that a copy of this deed was published upon the land included in the tenure or under-tenure. This evidence of intention is required when three months have elapsed from the date of the Merger. This interval will afford sufficient time for consideration and for the execution of the deed in those cases in which it is decided to prevent the Merger.

Cases in which Merger shall not take place.

§ 115. We have provided that there shall be no Merger when the superior interest belongs to several coparceners, some but not all of whom acquire the interest immediately subordinate. Any other rule would be productive of confusion, regard being had to the peculiar nature of coparcenary. We have enacted that the presumption of Merger shall not arise in the case of a minor until he becomes of full age, or in the case of a person of unsound mind until he becomes of sound mind. As the presumption is made to depend upon intention, it cannot reasonably have effect until the person in whom the interests meet is capable of a legal intention. It would be iniquitable that, apart from

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[1] Here, as elsewhere in the Bill, the figures inserted should be regarded as tentative merely, to be changed for good reason, shown by those who criticise the Bill.

[2] The present state of the law in Bengal and the North-Western Provinces as to land used for building and other non-agricultural purposes will be found summarised in Mr. Field's Note of the 24th December 1879, which has been placed with the proceedings of the Commission.

the provisions of law as to the avoidance of incumbrances by the sale of a tenure or under-tenure for arrears of its own rent, persons having a lien upon the inferior interest, or holding as tenants under the former owner of such interests, should be prejudiced. We have accordingly provided for the protection of such persons and their rights.[1] The question of Merger, when Government acquires an estate and the paramount title and proprietary interest thus meet in the person of Government, has already been referred to in paragraph 5 above.

Protection of persons having a lien upon, or holding as tenants under, the inferior interest.

§ 116. The registration of transfers of tenures and under-tenures in the *sarrishta* of the superior landlord, is a subject which has on more than one occasion received the attention of the Legislature. Since the earliest times a record has been kept in the Collectorate of the transfers of revenue-paying estates, in order that Government might be apprised as to who is the person for the time being liable to pay the revenue. When *patni* tenures were created their incidents were in many respects assimilated to those of revenue-paying estates. We may take, for example, the liability to sale for arrears, the avoidance of incumbrances by such a sale, and further (which is pertinent to our present subject) the registration of transfers. The proprietor was required, upon a fee being paid and security being given, to register all transfers and otherwise give effect to them by discharging the transferrer from personal responsibility and accepting the engagements of the transferee. Act X of 1859 required all dependant *talukdars* and other persons possessing a permanent transferable interest in land intermediate between the zemindar and the cultivators to register in the *sarrishta* of the zemindar or superior tenant, to whom the rents of their *taluks* or tenures were payable, all transfers of such *taluks* or tenures or portions of them by sale, gift or otherwise, as well as all successions thereto and divisions among heirs in cases of inheritance. The zemindar or superior tenant was further required to admit to registry, and otherwise give effect to all such transfers when made in good faith, and all such successions and divisions, and, if he refused to do so, an application could be made to the Collector who was empowered to inquire and, if he saw fit, make an order for registration. Act VIII (B.C.) of 1869 reproduced so much of these provisions as required the tenant on the one hand to register, and the landlord on the other hand to admit to registry; it omitted any provision for compelling the landlord to admit to registry, no doubt because it was thought unnecessary to make any such express provision, when the cognizance of all cases arising out of the relation of landlord and tenant was transferred from the revenue to the civil courts. The right being declared, the civil court could afford a remedy.

Registration of transfers of tenures and under-tenures. Provisions of the former law on the subject.

§ 117. When a *patni* tenure was sold in execution of a decree and the purchaser did not within one month register his purchase, the *zemindar* was empowered to send a *sazawal* and attach the tenure; and so also, if a purchaser at a sale for arrears of rent failed for one month to furnish security when required by the *zemindar*. In other cases, however, the landlord had no means of compelling the transferee to register, and non-registration in this case of private transfers soon became usual. Two causes contributed to this: First, the landlord was by law entitled to a fee upon registration of the transfer of a *patni* tenure, and the payment of such a fee was customary in the case of other tenures and under-tenures. The payment of this fee was avoided by not registering the transfer. Secondly, the habit of holding land *benami* was facilitated by secret private transfers. Persons unacquainted with the customs of this country may ask how the transfer could be kept secret when the transferee has to pay the rent. The answer is to be found in a practice very prevalent in this country. Rent is ordinarily received from any one who brings it, but the receipt is granted in the name of the person, whose name stands in the landlord's books. Thus, a receipt may be given in the name of a man who died forty years ago, the payment being stated therein to be made *marfat, guzrat*, *i.e.*, by, or through the person, who actually brought the money. This practice, which appears to us to be a very mischievous one, constantly leads to litigation when a balance of rent remains unpaid after the sale of the tenure, or when for other purposes it is necessary to ascertain the real owner of the tenure.

Failure of the former law, because landlord had no means of compelling the registration of transfers except in a few cases.

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[1] The present state of the law of Merger will be found summarized in Mr. Field's Note of the 19th December 1879, annexed to the proceedings of the Commission.

Provisions of the draft Bill as to the registration of transfers of tenures, under-tenures, and occupancy holdings.

§ 118. Turning now to the provisions of the draft Bill, we have enacted (section 46) that every succession to, or transfer of, a tenure or under-tenure or any portion thereof, or of an occupancy holding, shall, within three months after such transfer or succession, be registered in the *sarrishta* or rent-office of the landlord to whom the rent of such tenure, under-tenure or occupancy holding is payable. It may possibly be that the period of three months here allowed is too short, and that six months would be a more proper period. The landlord is required to admit to registry and otherwise give effect to every such transfer or succession, but no landlord is required to give effect to any division or distribution of the rent, nor shall any such division or distribution be valid against him without his consent in writing. We have defined the term "transfer" to mean a transfer by private sale, gift or exchange, or by sale in execution of a decree, and we have defined "succession" to mean devolution by will or by inheritance. We have declared the landlord entitled to a fee upon every registration of a transfer or succession, such fee to be two per centum of the annual rent, but not to be less in any case than one rupee or more than one hundred rupees (section 47). We have provided that in every case of transfer not being a transfer by sale in execution of a decree, the transferrer shall cease to be, and the transferee shall become, personally liable for the rent from and after the date of application for registry. This applies to cases of private transfer, which must be known both to the transferrer and the transferee, who thus have it in their power to regulate their liability for the rent falling due subsequent to the transfer (section 48). If no application is made for the registration of the transfer, the transfer remains liable for the rent, and the landlord is not bound to recognise the transfer (section 49). It is thus made the interest both of the transferrer and of the transferee to have the transfer registered—of the former, that he may escape liability for future rent, of the latter that he may be able to assert his rights as tenant. When the transfer is by sale in execution of a decree for arrears of the rent of the tenure, under-tenure or occupancy holding, the transferee or purchaser becomes liable for the rent from the date of the confirmation of the sale by the court. Here, as the sale is made at the instance of the landlord, he must be presumed to be aware of it, and it would be unreasonable to hold the late tenant responsible for the rent after the confirmation of the sale. When the transfer is by an execution sale not being a sale for arrears of rent, the landlord does not necessarily know of the sale. The tenant, whose interest is sold in execution, must be presumed to know of the proceedings before and after decree, and we have therefore imposed upon him the duty of giving the landlord notice of the sale if he wishes to be absolved from personal liability for rent. In cases of succession we have declared the person succeeding to be, upon taking possession, personally liable for the rent from and after the death of the previous tenant. It will be remembered that in all these cases the tenure, under-tenure or occupancy holding can be sold for arrears of its own rent, and that the question of personal liability becomes important only when the arrears are not liquidated by the sale of the tenure, under-tenure or holding.

Consequence of non-registration of transfer or succession in the case of a tenure or under-tenure.

§ 119. The consequence of non-registration of a private transfer is, as we have just explained, that the former tenant is not discharged from his liability for the rent, and the landlord is not bound to recognise the transfer. The position of the latter is, therefore, not altered to his detriment. In cases of transfer of a tenure or under-tenure by execution sale, and in cases of succession, we have provided that if application is not made for registration within three months, the landlord may attach the tenure or under-tenure and collect the rents for any surplus of which over and above his own head-rent and the collection-expenses he is, however, liable to account. The attachment may be continued until the transfer or succession is registered, and, if the collections are insufficient to discharge the head-rent, the superior landlord may bring the tenure or under-tenure to sale. If after the sale there is still a deficiency, he may proceed to make the transferee personally liable. Mr. O'Kinealy is opposed to extending the right of attachment to under-tenures.

§ 120. In cases of succession to occupancy holdings and of their transfer by execution sale, a somewhat different procedure is necessary, as they are usually cultivated by the occupier, and in this case there are no rents to collect. We have accordingly allowed the landlord to attach the holding, when registra-

Consequence of non-registration of a transfer or succession in the case of an occupancy holding.

tion has not been applied for within three months, and cultivate it or let it for cultivation. If registration is not applied for before the expiry of the year next ensuing after the succession of transfer, we have provided that the holding shall be at the absolute disposal of the landlord. We think that if the person succeeding or purchasing takes no steps to effect registration for more than a year, this may reasonably be taken as an abandonment of the holding (section 51).

Time within which registration must be applied for. After this time, registration only on payment of ten times the fee.

If landlord refuses to register, civil court may compel him, and may award damages.

Board may prescribe form of register of transfers and successions.

§ 121. We have provided (section 46) that application for registration shall be made within three months after the date of the succession or transfer, and in this case the fee to which the landlord will be entitled upon registration is two per centum of the annual rent. If registration is not applied for within three months, we considered what the penalty should be for failing to apply within time. Forfeiture of the tenure or under-tenure was suggested, but we are all agreed that this would be too severe, and a majority of us have finally decided that it will be sufficient to provide that the penalty for coming after the three months shall be the payment of ten times the ordinary fee, subject, however, to a minimum of ten rupees and a maximum of one thousand. The same rule applies to an occupancy holding after the three months and before the expiry of the year next ensuing after the succession or transfer by execution sale. Mr. O'Kinealy would not impose any additional fee by way of penalty, and would limit the sanction for non-registration to the landlord's not being bound to recognise the succession or transfer. Where a landlord without just cause refuses to register a transfer or succession, we have provided for a civil suit to compel him; and if pecuniary loss has resulted from his refusal, the civil court may award damages to the person injured. We have enacted that the Board of Revenue may prescribe for any class of landlords a form of register of successions to, and transfers of, tenures, under-tenures and occupancy holdings; and that when any such form has been prescribed, every person concerned in any such succession or transfer shall be entitled to a copy of the entry relating thereto on payment of a fee of four annas. Having regard to the large number of petty landlords in these provinces, we considered that we ought not to prescribe this register for all landlords generally, while in large estates such a register may be maintained with most of the advantages of a court roll in an English manor.

Security for payment of rent upon registration of transfer.

§ 122. The only class of tenure-holders who under the existing law are required to give security for the payment of their rent, are *patnidars*. In every case of transfer of a *patni* tenure by private sale, gift or exchange, or by sale in execution of a decree, the transferee may be required to give substantial security to the amount of half the yearly rent, and, if such security be not furnished, the proprietor may refuse to register the transfer. We have reproduced these provisions relating to *patni* tenures; but it has suggested itself as a matter for consideration whether similar provisions might not well be made for all tenures, under-tenures, and occupancy holdings, which are made saleable in execution of decrees for their own arrears of rent. We have not before us sufficient materials to enable us to settle this question to our satisfaction, but we recommend that it be not lost sight of in any further discussion of the whole subject which may ensue upon the publication of this report.

Ryots' rent to be payable in four quarterly instalments:

on 1st Asarh, 1st Asin, 1st Pous, and 1st Cheit.

§ 123. We have declared that the rent payable by a ryot shall be paid in four quarterly instalments falling due upon the 1st Asarh, the 1st Asin, the 1st Pous, and the 1st Cheit, respectively. When the instalments of rent have been regulated by any agreement or custom, then the Asarh instalment shall be the total of the instalments payable according thereto during the months Beisakh, Jeyt and Asarh; the Asin instalment shall be the total of the instalments payable in the months Sraban, Bhadro and Asin; the Pous instalment shall be the total of the instalments payable in Kartik, Aghun and Pous, and the Cheit instalment shall be the total of the instalments payable in Magh, Falgun and Cheit. It will be important to ascertain whether these dates and months will be suitable for all districts in Bengal and Behar. When no such agreement or custom exists, the Collector is to determine what proportion of the whole rent shall be payable at each quarterly instalment, and is to publish throughout his district the proportions so settled. In the case of rent payable by tenure-holders and under-tenure-holders, we have allowed the parties to contract as to the instalments most convenient to both parties (section 55).

Instalments of rent payable by tenure-holders and under-tenure-holders. Arrears of rent and interest thereupon.

Where no such contract has been made, such rent is to be payable, as ryots' rent, in four quarterly instalments. Any instalment of rent not paid before *sunset* of the date on which it is due according to the above provisions, is to be deemed an arrear of rent, and is to bear interest at the rate of twelve per centum per annum. We have made it imperative upon the courts to decree this interest, unless the tenant can show that he was prevented by causes beyond his own control, as, for example, by a total failure of the crops, from paying his rent at the proper time. A majority of us consider that this is a reasonable concession to landlords, as we propose to take away the frequent instalments in which ryots' rent is now payable by usage or agreement, and to allow no interest for the interval between the dates on which rent is so payable and the new dates substituted by the Bill.

Provisions of the Bill as to receipts for rent;

§ 124. As to receipts for rent we have substantially adopted the provisions of Mr. Mackenzie's Bill. We have declared that every tenant, who makes a payment to his landlord of rent *or of any money recoverable as rent* is entitled to obtain thereupon and without delay a receipt for the amount so paid. The words in italics are new and include road-cess, sums payable under "The Bengal Embankment Act, 1873," under "The Bengal Survey Act, 1875," and other Acts, which have made certain sums recoverable as arrears of rent. We have not thought it desirable to prescribe any particular form in which reciepts should be given, but we have prescribed the essential particulars which they must contain, *viz.*, the date of payment, the amount paid, or, where rent is paid in kind, the quantity of produce delivered, the tenure, under-tenure, holding or land, and the instalment and year, in respect of which the payment is made. The receipt may be in any form so long as it contains these essential particulars. We have further provided that every tenant is entitled to receive at the close of the year a statement of account showing the tenure, under-tenure, holding or land for which the rent is payable, the annual rent payable, the amount in arrear at the beginning of the year, the payments made during the year, the portion of each payment credited to arrears and to current rent, and the amount in arrear at the close of the year. This is, in fact, the *akhiri dakhilah*, or final receipt usual in the country under different names, but with the particulars essential to enable the tenant to know his exact position towards his landlord. We have further enacted that the landlord shall keep counterparts of the receipts and the account statements; and that he shall provide himself with forms of such receipts and account statements with the counterparts attached, bound together in books containing not less than twenty-five each and consecutively numbered. We have allowed six months after the commencement of the Act for landlords to provide themselves with the necessary forms. After that time the omission or refusal to give a tenant on demand a receipt or statement of account containing the above particulars shall subject the landlord to the penalty provided for withholding a receipt for rent paid (section 57).

and as to statements of account at the end of the year.

Deposit of rent—duties connected with, transferred from the civil courts to the revenue authorities.

§ 125. We have made important alterations and amendments in the law relating to the deposit of rent. In the first place we have transferred the duty of receiving these deposits from the civil courts to the revenue authorities, and we have allowed rent to be deposited not only at the Collectorate Treasury at head-quarters, but also at Sub-divisional Treasuries. We think that where sub-divisions have been established, the benefit of the sub-divisional system should be afforded to the people in this as well as other respects. Under the existing law there is only one case in which rent can be deposited, namely, when the tenant has tendered the rent to his landlord and the landlord has refused to receive it. We have retained this and have provided for two other cases: (1) when the rent is payable to coparceners, who have not appointed, and on behalf of whom the District Judge has not appointed, a common manager, and the tenant is unable to obtain their joint receipt; (2) when, in consequence of a disputed succession or other cause, the tenant entertains a *bonâ fide* doubt as to who is entitled to the rent. We trust that the result of these changes will be, in the first case, to constrain coparceners to make proper arrangements for the collection of their rents; and, in the second case, to check the unwholesome practice of litigating questions of disputed title by collateral issues raised in rent suits, and in both cases to save the ryots from much harassment. We are aware that the facility afforded to tenants of depositing their rent in cases of tender made and refused has been abused to a

Deposit of rent allowed in two new cases.

Precautions against abuse of the law.

certain extent, rent being too often deposited without any tender having been made, and it being impossible to bring persons who have made false statements, to punishment in consequence of the very general nature of the allegations inserted in their petitions. To psevent abuse of the law as amended, we have now provided that in cases of tender the deposit must be made within ten clear days from the date of the tender, and in other cases, within fifteen clear days from the day on which the rent fell due. The deposit is to be made by presenting a written application and with it a written declaration. In cases of tender this declaration is to set forth the date of such tender and the persons in whose presence it was made. In other cases it is to set forth sufficient facts to enable the revenue authorities to judge whether the case falls within the provisions of the Act. The amount deposited must be the full amount of rent due up to date, with, in the case of a tender, the interest (if any) due thereupon at the date of tender. The officer in charge of the Collectorate or Sub-divisional Treasury is required to give a receipt for the rent so deposited, and this receipt is declared to have the effect of a legal acquittance.

Probable effect of these provisions in creating work at the Treasuries—plan for reducing the possible pressure.

§ 126. The effect of these provisions, together with the provisions as to quarterly instalments of rent will be that on four occasions in the year, during some ten or fifteen days, there will be a pressure of work at the treasuries at head-quarters and at sub-divisions. This pressure may be very considerable upon the occurrence of abnormal circumstances, but as local authorities will be fully informed of the time of its possible occurrence, they can be prepared for it. We have endeavoured to abridge the work of issuing notices of deposits to the landlords, by providing that the treasury officer shall post in a conspicuous place in his office a notification of such deposits having been made, addressed to the persons entitled to the rents. As most landlords of any position have agents or mukhtars about the Collectorate and sub-divisional offices, the probable effect will be that such agents on seeing the lists of deposits will draw the money without delay, and that the trouble of issuing individual notices will be obviated. If no application for the money is made on the part of the landlord within fifteen days after such notification has been posted, the treasury officer shall within a further period of fifteen days after the expiry of the first-mentioned fifteen days cause a notice to be served upon him. The cost of serving this notice will be deducted from the amount of the deposit. This will make it the interest of landlords to inspect the lists of deposits and obtain the money before the notice is served. The rent deposited may be paid, in the case of a tender, to the person entitled to it; in the case of coparceners, upon their joint receipt or that of their common manager, when a common manager has been appointed; and in cases of disputed title, to the claimants upon their joint receipt, or to any of them who has obtained a decree establishing his title to the whole or part of it. If no payment be made for three years, the amount deposited may be refunded to the depositor upon his giving back the receipt given him at the treasury for the money when deposited. This, of course, is not meant to interfere with the rules of the Account Department, which require the special order of the Accountant General before deposits of more than three years' standing can be repaid. In order to meet cases in which, notwithstanding the deposit, the landlord has sued for the rent and has obtained a decree because the deposit was not made in accordance with the provisions of the law, we have enacted that before the expiry of three years the amount may be paid, upon the joint application of the depositor and the person entitled to the rent, in any manner requested in such application. This will enable the money deposited to be made available in satisfaction of the decree obtained for the rent improperly deposited.

Refund of deposits.

Apportionment of rent—No sufficient provision for, in the existing law. Inconvenient results.

§ 127. Another fruitful source of litigation and harassment to the ryots is the want of sufficient provision for the apportionment of rent. When revenue-paying estates belonging to coparceners are partitioned between them by metes and bounds, "The Estates Partition Act, 1876" (VIII (B.C.)) provides certain rules for the apportionment of the rent of tenants whose lands fall partly within one share and partly within another. There are, however, no similar rules applicable when revenue-free land, or a tenure or under-tenure in revenue-paying land, is divided, either in consequence of part being sold, or by reason of a partition between co-heirs which can be enforced in the civil courts. The objection to appointment of rent is that the tenant is thereby exposed

Advantages of apportionment.

to several suits for a thing which was originally entire, and that he ought not to be obliged to pay his rent in different parcels and to several landlords when he contracted to pay in one entire sum to one person. This is an argument put forward wholly in the interest of the tenant, and we think that, if the convenience of the tenant alone is to be considered, any supposed advantange obtained by him in paying his rent in one parcel is in this country more than counterbalanced by the worry to which he is sure to be exposed when his landlord's property is split up and his land falls within two or more of the shares into which it is divided. Any argument drawn from the convenience of the tenant is here in favour of apportionment rather than otherwise. Were this not so, we would yet agree with those who observe that apportionment of rent is required by the necessities of mankind, by the exigencies of families, by the demands of business; that the tenant can avoid a multiplicity of suits by punctuality of payment; and that it is difficult to see the reality of the hardship to which he is exposed, since he has to pay no more in the end than his stipulated or customary rent.

Provisions of the draft Bill as to apportionment of rent.

§ 128. We have accordingly provided that when two or more persons become separately entitled to separate portions of an area of land which forms the subject of a separate tenancy, and such portions have been or can be divided by metes and bounds, such persons shall be entitled to have such rent apportioned, and after its apportionment to receive separately the shares of rent apportioned upon such portions respectively (section 62). We have further provided that the apportionment may be made by mutual agreement between such persons and the tenant; but, if they cannot agree, the civil court may, upon the application of any of them, proceed to make the apportionment, and may for this purpose direct a measurement of the whole or any portion of the land. We may observe that the facility afforded to tenants of depositing their rents in cases of disputed claim between their landlords will have the effect of constraining the latter in many cases to take steps for apportionment either by mutual accommodation or by proceedings in court.

Every tenure, under-tenure and occupancy holding declared to be hypothecated for the rent thereof.

§ 129. We have declared every tenure, under-tenure, and occupancy holding to be hypothecated for its own rent, and that such rent shall be a first charge thereupon (section 64). We have then enacted that when the rent is in arrear the landlord shall not be entitled to resort to any other process for the recovery thereof, until he has first brought the tenure, under-tenure, or occupancy holding to sale, either in a summary manner (in those cases to which the provisions of Chapter XVI are applicable) or in execution of a decree for rent. A very important change is involved in these provisions. As the law now stands, the produce of the land is, but the land itself is not, hypothecated for the rent. The hyothecation of the produce is part of the law of distraint which we have abolished. We think that by hypothecating the tenure, under-tenure, or occupancy holding for the rent, by making the rent a first charge upon it, and by compelling the landlord to proceed in the first instance against the tenure, under-tenure or holding, we shall, on the one hand, secure to the landlord punctual payment of his rent, or effectual facility in realizing it when not paid, regard being here further had to the procedure provisions of the Bill, and, on the other hand, protect the tenant from useless harassment. Realization of arrears of revenue or rent by the sale of the defaulter's interest is a principle now long established in the country and well understood by the people. That as a means it is successful, we know from experience of its operation in the case of revenue-paying estates, *patni taluks*, and other tenures. We have every reason to conclude that it will be equally successful in the case of occupancy holdings. Indeed, we are not without previous experience in respect of these also, many landlords, of their own option and as the readiest way of getting their rent, having brought ryots' holdings to sale in execution of decrees obtained for rent. The largest amount of rent which a landlord can sue to recover is about four years' rent. There are few occupancy holdings in fairly populated districts which are not worth four years' rent with the costs of getting a decree for it. If the landlord has any doubt on this point, he need not allow more than a single year's rent, or even than a single quarter's rent, to fall into arrear without suing for it.

Consideration of these provisions.

Sale of a ryot's holding the most.

§ 130. We hope that the procedure which we have provided will enable a landlord to obtain a decree without unreasonable delay. Having obtained his

effectual way of making him pay if he can; and of realizing the rent if he cannot.

Examination of the question from the landlord's point of view.

decree, he can at once proceed to sell the tenure, under-tenure, or occupancy holding. It is well known that if a ryot has the means of paying there is no more effective way of making him pay than putting up his *jumma* or holding to sale. He will go to prison for a debt if he is sure of having his land when he comes out. He will let his cattle be sold, for he may hope to purchase others as good in their place. But his land, whereon stands his homestead, where he was born and spent his childhood and boyhood, the fields which his father and his father's father cultivated, find for him no substitute if they pass into the hands of strangers. As a means then of compelling the ryot to pay, who can pay, we believe that the advertised sale of his *jumma* or holding will be most effectual. If from misfortune or other cause the ryot is unable to pay, the sale is, as we have shown, almost certain to satisfy the landlord's claim for rent. In compelling the landlord then to proceed to the sale, we compel him to do what is for his immediate interest. But it may be said that the landlord may not wish to be hard on his ryot, may not wish to deprive him of his land, may be satisfied with part of the debt, and may be willing to wait for the rest until the ryot is in more fortunate circumstances, and that, if allowed to take the ryot's movables or put him in jail, he may accomplish this. We are not prepared to accept these arguments or take this view. We think that the threatened sale of his holding will have as strong a compulsory effect as putting him in jail, while the seizure of his movables will only leave him unable to carry on the cultivation. If the landlord desires to exercise mercy and forbearance towards an unfortunate ryot who does not pay, not because he will not, but because he cannot, let him stay his hand and not execute the decree. He is not bound to proceed to the sale of the holding. If the ryot can pay even part, let him take it and certify the payment to the court. There is nothing in the law to hinder him from doing so.

Examination of the question from the ryot's point of view.

§ 131. So much for the question from the point of view of the landlord's interest. Let us now examine it from the point of view of the ryot's interest. We think that the dread of losing his land by a sale will operate to make the ryot more careful to pay his rent and not get into arrears. It may be said—Why has not the fear of ejectment done this? Why should the dread of a sale be more effectual than the dread of ejectment? To this we reply that, unless in the case of a ryot who has become really obnoxious to his landlord, and whom that landlord is determined to get rid of at any price, ejactment is not usually enforced; the ryot pays a trifling *salámi* or agrees to pay a little more rent, and either the decree for eviction is not executed, or, if it is executed, he is allowed to resume possession. But in the case of a sale the land passes to a stranger, and return to possession becomes impossible. If the ryot is unable to pay his rent because of indolence or bad cultivation, it is for the interest of the community that the land should be sold and come into better hands. If, by the operation of the Hindoo or Mahomedan law of inheritance, the holding comes into the possession of a number of co-sharers who cannot agree, and owing to their dissensions and consequent bad management the rent gets into arrear, a sale and a transfer thereby to the hands of more efficient husbandmen will counteract the tendency of that law to create too minute sub-divisions. The fact of holdings being purchaseable, combined with the prevailing and general desire to invest savings in land, may encourage thrift. We know that in some parts of Eastern Bengal the holdings and under-tenures there existing are a very favourite investment for savings, and that men save in order to purchase them. Then to look at the matter in another way, if the land is over-rented, if it is worthless, or its area has been diminished by diluvion and the ryot is unable to bear the expense of a suit for abatement, or does not really care to keep the *jumma* a sale is a ready means of getting the full value, the surplus over and above the rent being payable to the ryot. If, on the contrary, the ryot has improved the holding and desires to realize the value of his improvements, by allowing his rent to fall into arrear he can bring about a sale, the surplus proceeds of which over and above the rent due to the landlord will be paid over to him. We may observe that even now it is by no means uncommon to effect a transfer by a sale through the court brought about by a wilful default, some purchasers thinking that in this way they get a better title.

Proposed provisions will, generally

§ 132. We have so far discussed the proposed change mainly in connection with occupancy holdings, because we think that it concerns them chiefly. Alspeaking, make no real change so far as tenures and under-tenures are concerned.

Two important amendments.

Landlord compelled to purchase at sale, if no other person will.

though tenures and under-tenures are not at present hypothecated for their own rent by any express provision of law, they are in a great measure practically so, this being the result of the decisions as to the landlord's right to follow the tenure or under-tenure in execution of a decree obtained by him for rent; and the usual practice is to realize unpaid arrears by a sale either under the Patni Regulation (VIII of 1819) where it applies, or after decree in execution under the provisions contained in Act VIII (B.C.) of 1865, or Act VIII (B.C.) of 1869. The new provisions will, therefore, make no substantial change so far as tenures and under-tenures are concerned. There are, however, two points which partake of the nature of an exception to this general statement and which may well be noticed here. We have provided (section 207(*b*)) that where a tenure, under-tenure or occupancy holding is put up to auction in execution of a decree for arrears of rent, and no bid is made for it, the decree-holder, *i.e.*, the landlord, shall be required to bid for it, and if he refuses to do so, he shall not be entitled to proceed to execute his decree against the person or other property of the judgment-debtor. The object of this provision may be explained in a few words. A tenure-holder or under-tenure-holder cannot relinquish his tenure or under-tenure in the same manner as a ryot can relinquish his holding. It may happen that a tenure or under-tenure may become utterly worthless. One of the great rivers may cover it with sand, or it may be overrun with a noxious weed inimical to cultivation. As the law now stands, the unfortunate tenant may have to go on paying rent for an instrument of production which yields him nothing. If he does not pay, he is sued and a decree obtained against him. No one will bid for the tenure or under-tenure, and so he and his other property are liable to be taken in execution. If he is a person of substance, the landlord succeeds in getting rent year after year for what is utterly worthless. Under the provisions we propose to make, this can happen once, and not oftener. The landlord must bid and purchase, and this purchase relieves the tenant from further liability. This amendment of the present law is in the interest of the tenant: the following is in the interest of the landlord. We have enacted (section 211 (3)) that the landlord may be paid from the surplus sale-proceeds any rent which fell due before the sale and after the date upon which the latest arrear recovered by the decree became due: provided, however, that the decree-holder shall not under this rule recover any rent which he might have included in the suit in which he obtained the decree, and provided also that in no case shall he obtain rent for more than six months after the date of the final decree. In case of dispute as to any such rent being due, the court is to decide. The effect of these provisions will be to prevent multiplicity of suits and to secure the landlord against loss of arrears, which are sometimes very difficult to recover by enforcing a personal liability when the tenure or under-tenure has been sold.

Shall landlord's claim for rent rank *pari passu* with other debts or be allowed a preference?

§ 133. The draft of this section (64), as first prepared by Mr. Field, contained the following additional passage :—" If any such tenure or under-tenure, or in any case in which a holding is so saleable, any such holding be brought to sale in execution of a decree for money obtained by a person other than the landlord, such landlord shall be entitled to be first paid out of the sale-proceeds any rent which may be due to him in respect of such tenure, under-tenure or holding; and the balance only of such sale-proceeds-after such payment of rent shall be available for the liquidation of the decree-holder's claim, or for distribution amongst creditors entitled to such distribution." A majority of us decided to omit these words in the draft of the Bill, but we think that the matter of the words so omitted ought to be noticed, as, if the Bill comes before Council, a different opinion may prevail. According to the existing law a landlord's claim for rent has no preference; and, in the case of his tenant being declared an insolvent under the provisions of Chapter XX of *The Code of Civil Procedure*, he can take only rateably along with the other creditors. We may observe that, according to the law of England, and also, we believe, of America, a landlord has no priority over other creditors; but in order to prevent collusion between tenants and their judgment-creditors to defeat the landlord's remedy, it was enacted by the 8th Ann, Chapter 14, section 1, that no goods or chattels whatsoever lying or being in or upon any messuage, lands or tenements, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out

8 Ann, Cap. 14, section 1.

shall, before the removal of such goods from off the said premises, pay to the landlord or his bailiff all such sum or sums of money as are or shall be due for rent at the time of the taking of such goods or chattels, provided that the said arrears of rent do not amount to more than one year's rent.

When rent is payable to coparceners and dissension prevails amongst them, their tenants are exposed to much harassment.

§ 134. A serious source of difficulty in the relations between landlords and tenants arises out of the system of coparcenary which is customary amongst Hindoos, and is not uncommonly imitated by Mahomedans. When coparceners, or co-sharers as they are commonly called, stand in the position of landlords, and manage their affairs either through a single member of the family (*karia*), or through a manager appointed by, and acting for, all, there is no difficulty and the tenants are put to no greater inconvenience than the tenants of other landlords. But when, on the contrary, the co-sharers are disunited and dissension prevails amongst them, their tenants are exposed to considerable harassment. The rent is payable to the co-sharers jointly, and properly upon their joint receipt; but each attempts to collect separately the share to which he conceives himself entitled; and the tenant, who would comply with all their demands, would find that he had to pay a considerable amount more than his actual rent. Then the servants and adherents of each co-sharer seek their own perquisites, and, in order to obtain these, delude the ignorant ryots, who are thus induced to pay more rent to one co-sharer than he is entitled to receive, or, for the purpose of manufacturing evidence, receipts are given for a larger share, while in fact less sums were paid than appear in these fraudulent documents. Each co-sharer attempts to enhance the rents of his share, although no partition has been made; or each seeks to make a measurement, and rival *amins* prepare *chitahs*, the entries in which are regulated by the gratifications which the ryots are able or willing to give them. Litigation ensues, and the tenants side with this co-sharer or that; they give evidence and earn brief gratitude from one party, undying hatred from the other. A riot takes place between the adherents of the opposite parties, and the police appear on the spot to reap a rich harvest. The ryots are impoverished, cultivation thrown back, and distrust and dissension pervade the village. Such is a picture, by no means overdrawn, of the pernicious results of want of union amongst a brotherhood of landlords.

Remedy provided in 1812.

§ 135. The necessity of a remedy for this state of things was felt at an early period of British administration, and in 1812 it was enacted that, inasmuch as inconvenience to the public and injury to private rights had been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, whenever sufficient cause shall be shown by the revenue authorities or by any of the individuals holding an interest in such estates for the interposition of the courts of judicature, it shall be competent to the zillah Judges to appoint a person duly qualified and under proper security to manage the estate; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate (Regulation V of 1812, section 26). The Judge was also competent, upon the representation of the revenue authorities, or of any such person as aforesaid, to remove any manager so appointed (*id.*, section 27). A subsequent Regulation (V of 1827) enacted that when the zillah court thought it just and proper under the provision of that Regulation to provide for the administration or management of landed property, it should issue a precept to the Collector directing him to hold the estate in attachment and appoint a person for the due care and management thereof, under good and adequate security for the faithful discharge of the trust in a sum proportionate to the extent thereof. The reference in Regulation V of 1827 to Regulation V of 1812 was repealed by Act XVI of 1874, so that it is not now competent to a District Judge to send a precept to the Collector directing him to provide for the management of an estate belonging to a joint undivided family. The fragment of Regulation V of 1812 which is still in force is incomplete, and in consequence almost inoperative.

Regulation V of 1827

Provisions of the draft Bill for the appointment of a manager, when coparceners disagree.

§ 136. Such being the present state of the law, a majority of us have thought that this fragment might well be repealed and a complete set of effective provisions substituted therefor. We have accordingly enacted that when coparceners, who jointly own an estate, tenure or under-tenure, disagree as to the joint management thereof, and in consequence there has ensued, or is likely to ensue (*a*) inconvenience to the public, or (*b*) injury to private rights, the District Judge may, upon the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in such estate, tenure or under-tenure, direct a notice to be served upon the coparceners calling upon them to show cause why they should not appoint a common manager. If the coparceners do not within a month show cause why they should not appoint a common manager, the District Judge may direct them to do so (section 65 of the draft Bill). If they fail to obey this direction, the District Judge may either appoint a manager or direct that the estate, tenure or under-tenure be managed by the Court of Wards, if it is willing to undertake the charge. We have thought it advisable to give the coparceners an opportunity of appointing a manager of their own selecting before the District Judge proceeds virtually to depose them. When the Court of Wards undertakes the charge, it will govern itself by the provisions of *The Court of Wards' Act*, IX (B.C.) of 1879 (section 66.) It is discretionary with the Court of Wards to undertake the charge or not. A majority of us have thought it advisable to render this system of management possible, as there may be cases in which no other management will be available. Mr. O'Kinealy doubts if it is advisable to extend the exceptional jurisdiction of the Court of Wards and empower it to manage the estates of persons who happen to disagree amongst themselves. When the District Judge appoints a manager, he is empowered to settle his remuneration and the manner of it, whether, that is to say, by a fixed salary or a percentage of the collections. He is also empowered to require reasonable security for the proper discharge of the duties of the office. The manager is authorized to exercise the same powers as the coparceners jointly might, but for his appointment, have exercised. He is required to keep regular accounts and to allow the coparceners to inspect and take copies of them. He may be removed upon the application of the Collector or of any person interested in the estate, tenure or under-tenure (section 67). The District Judge may at any time direct that the management be restored to the coparceners, if he is satisfied that they will conduct it without inconvenience to the public or injury to private rights.

Powers and duties of the manager.

All coparceners must, as a rule, be parties to suits for arrears of rent. Three exceptions to this rule.

§ 137. We have provided (section 69) that rent payable to coparceners shall be paid upon the joint receipt of all such coparceners, or if a manager appointed by them or by the District Judge; and that all such coparceners must join as plaintiffs or be made defendants in any suit brought for the recovery of arrears of any such rent, otherwise that such suit shall be dismissed with costs. In this case, which constitutes the rule, the entire rent must be sued for. To this rule we have made three exceptions: *First*, when the tenant and one or more of several coparceners, with the consent of the other or others of them, have agreed that the share of rent to which such one or more coparceners is or are entitled shall be paid directly to him or them, such share may be so paid and recovered. Here all parties being agreed, no one can be endamaged. *Secondly*, when the tenant has usually paid to one or more of several coparceners without objection from the other or others of them, the share of rent to which such one or more coparceners is or are entitled, such share of rent may be so paid and recovered. Here the tacit acquiescence of all parties in the arrangement may be regarded as equivalent to an agreement. *Thirdly*, when a coparcener is unable to obtain his share of the rent payable by a tenant in consequence of collusion between such tenant and the other coparceners, he may sue to recover his share of rent separately, and shall in such suit make such other coparceners defendants. We have taken these exceptions from cases actually decided, and we consider that they are proper exceptions to the rule, and that the law as here settled by the decisions ought not to be altered. We have further adapted the case-law in enacting that a coparcener may not otherwise than conjointly with his other coparceners or through a manager (1) bring a tenure to summary sale, (2) measure lands in the occupation of tenants of the coparceners, or (3) enhance the rents of such tenants. These provisions in conjunction with the amendments of the law as to deposits of rent ought to effectually protect the ryots of coparcener landlords from harassment.

One coparcener may not bring tenure to summary sale, or measure lands, or enhance rents.

Miscellaneous rights of landlords and tenants.

§ 138. We have collected in Chapter XI some miscellaneous rights of landlords and tenants. Some of these are now to be found in fragments of the unrepealed Regulations: and some are taken from the case-law; while others again are rather tacitly admitted in the decisions of the courts than formally enunciated. We have retained the express prohibition against landlords imposing *abwabs* or cesses, or compelling the attendance of their ryots, or enforcing payment of rent otherwise than according to law (section 72.) We have enacted that a landlord is bound, upon a new letting, to put the tenant in possession of the property; also that every landlord is bound to maintain his tenant in the peaceable and quiet possession and enjoyment of the tenure, under-tenure, holding or land, in respect of which the relation of landlord and tenant exists between them; but that this duty extends only to interruption or disturbance by the landlord himself or any one claiming under or paramount to him and does not extend to interruption or disturbance by third parties (section 73.) We have provided that no one may grant a valid lease for a term exceeding his own interest; that a lease granted for a term so in excess is valid to the extent of such interest and voidable only as to the excess; but that, if the lessor subsequently acquires the excess, the lease is, as against him, good for the excess also. We have further provided, in accordance with a suggestion of the learned Chief Justice, that if a person grants a lease of land in which he has no interest to a lessee who obtains possession of such land under such lease, and if such person afterwards acquires an interest in the land, the lease shall be valid to the extent of such after-acquired interest as between such lessor and lessee and persons claiming under them (section 74). These provisions are in accordance with the law of some civilized countries and are conformable to justice, equity, and good conscience.

Landlords may not impose cesses or compel attendance of ryots.

Landlord bound to put and maintain tenant in possession.

Leases granted in excess of interest or where no interest.

Right of landlord to make measurement and survey.

§ 139. We have re-enacted the provision to be found in the existing law that every landlord, unless restrained from so doing by express engagement with the occupants of the land, is entitled to make a general survey and measurement of all land comprised in any estate, tenure, under-tenure or holding, of the rents of which he is in receipt; and we have further enacted that he is entitled to enter upon such land for the purpose of making such survey and measurement (section 75). The right being thus declared, it follows that it can be enforced through the civil court, as any other legal right can be enforced. We have not inserted in the draft Bill any special provisions as to the mode of enforcing this right in ordinary cases; but, as already noticed, we have provided specially for cases in which a landlord is unable to ascertain the persons in occupation of the lands of his estate, tenure or under-tenure, or the different fields held by each ryot.

All measurements to be made according to Government standard of measurement—Conversion when necessary into local measure.

§ 140. The length of the local standard pole, with which a measurement of land should be made, is a fertile subject of dispute and litigation. It is not uncommon for a landlord to make a measurement of his lands with a pole of his own selection, the actual length of which must be a subject of doubt upon the evidence, while the ryots concerned aver not only that the standard pole of the *parganah* is different, but that during the measurement a third pole has occasionally been substituted for that which the landlord claims to be the standard. In order to remedy these difficulties as far as possible we have enacted that all measurements made by order of the civil court or Collector shall be made according to the Government measure of 14,400 square feet to one standard *bigha*. If it be shown that the rights of the parties to the suit are regulated by any different local measure depending upon a parganah standard pole, the Government measure shall be converted into local measure for the purposes of the suit. In case of dispute as to the standard pole, the Collector shall in any suit before himself, or any suit before a civil court on a reference made for this purpose by such court, determine the proper length of such pole. We have followed the present law, as settled by the decisions, in enacting that an appeal shall lie from the Collector's decision to the District Judge; but that if no such appeal be preferred the decision of the Collector shall be final (section 76.)

Ryot may not render his land unfit for, but may make improvements conducive to, agriculture.

§ 141. We have enacted in general terms (section 77) that a ryot may not, without the consent of his landlord, materially alter the condition of the land held by him, so as to render it unfit for agricultural or horticultural purposes; but that a ryot may, without the consent of his landlord, make any of the following improvements:—

(*a*) the erection of a dwelling-house and offices suitable for the habitation of a cultivating ryot and his family;

(*b*) the making of tanks, wells, and other works for the storage, supply or distribution of water for agricultural purposes;
(*c*) works for the drainage of land, or for the protection of land from floods, or from erosion, or other damage by water;
(*d*) the reclaiming, clearing or enclosing of land for agricultural purposes;
(*e*) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto;
(*f*) the planting of fruit trees.

Ryot may cut trees planted by himself or his predecessor.

We think that all these improvements ought to be allowed as being conducive to better cultivation and a higher standard of agriculture. We have further provided, in accordance with what a majority of us believe to be customary in many parts of Bengal, that a ryot may cut down and appropriate trees on his holding planted by himself or by any ryot from whom such holding was derived by public or private sale, gift, devise or inheritance (section 77).

Transferee of landlord's interest to give notice of transfer to tenant.

Cases in which relation of landlord and tenant determined.

Abandonment.

§ 142. We have provided that when a landlord's interest is transferred, the tenant shall not be liable to the transferee for rent which became due after the transfer and was paid to the person whose interest was transferred, unless the transferee has given to the tenant notice of the transfer (section 78). Some litigation has arisen in consequence of the want of a rule on this point which is a sufficiently simple one. We have enumerated (section 79) a number of cases in which the relation of landlord and tenant is declared to be determined. Some of these are to be found in the present law, for example, relinquishment by a ryot, and ejectment in certain cases by a landlord. Some are new and are taken from the case-law, the result of the decisions being supplemented where this was necessary in order to make a principle complete. We may refer to the most important of the latter. We have provided that in the case of a non-transferable holding the relation of landlord and tenant may be determined by abandonment, when the tenant having ceased to cultivate the land or pay rent therefor has been absent from the neighbourhood for a year and the landlord elects to treat the tenancy as determined (section 79, clause 3). In the case of a transferable holding the landlord must proceed to a sale of the holding, and, if the tenant cannot be found, a copy of the summons may be posted upon some conspicuous place upon the land included in the holding (section 174).

Disclaimer by tenant of landlord's title.

§ 143. We have carefully considered the question whether tenant, who disclaims and denies his landlord's title, ought to be punished with forfeiture. Some of us are strongly opposed to forfeiture as a principle; but we are agreed in thinking that when a tenant in a suit to which his landlord is a party disclaims such landlord's title and sets up an adverse title in himself or another by matter in writing or reduced to writing, the landlord should have the option of treating this disclaimer as a forfeiture of the tenancy, if he elects to do so within a reasonable time; and we have enacted accordingly, making six months the time within which the landlord must elect. In order to prevent any hardship in the application of this rule, we have further provided that there shall be no forfeiture in any case in which the tenant, having been let into possession by the person whose title he denied, can show that such person's title had expired or been defeated or annulled at the time of the disclaimer being made; or having been let into possession not by such person but by another, can show that he admitted the title of such person under a *bonâ fide* misapprehension or mistake. We are all agreed that forfeiture ought not to be the consequence, in this country especially, of mere words spoken under ordinary circumstances, or of a tenant's claiming a greater interest than he may be entitled to.

Avoidance of tenures, &c., by sale for arrears of revenue or rent, but at the election of the purchaser.

§ 144. The revenue sale laws, which have been in force from time to time, have invariably provided, not always in the same language though in all cases to the same effect, that upon a sale of an estate for arrears of revenue all subordinate tenures and incumbrances shall be cancelled or avoided from the date of the sale. It was settled by a well-known decision of the Privy Council that the meaning of this proviso was not that the tenures and incumbrances became *ipso facto* void by the sale, but that they were avoidable at the election of the purchaser. The same construction has been put upon similar language in more modern Acts concerned with the sale of tenures for arrears of rent. It

Election to be exercised within one year after knowledge.

has generally been assumed that the purchaser should exercise his election within a reasonable time after the sale; and, where he has not taken any active steps for a considerable time, the usual inferences have been drawn from conduct partaking of the nature of acquiescence. We think, however, that it is very desirable that there should be a fixed period of time within which the purchaser should decide whether he intends to avoid the tenures or under-tenures existing before the sale. We believe that some letigation will be prevented by having such a fixed period; and we have accordingly enacted that if, upon a sale for arrears of revenue or rent, the purchaser desires to avoid any subordinate lease or determine any subordinate tenancy, he must proceed to do so within one year after he had knowledge of its existence (section 79, clause 9).

Relation of landlord and tenant not determined by non-payment of rent merely.

No ejectment except through the court.

Away-going corp—Ryot ejected entitled to, and to enter on land to remove.

But landlord may take at a valuation.

§ 145. We have provided by way of explanation (section 79) that when the relation of landlord and tenant exists between two persons in respect of any property, the mere none-payment of rent shall not alone determine such relation. This is in accordance with the law as now settled by the decisions of the courts. In order to prevent arbitrary eviction we have enacted that no ryot shall be objected otherwise than in execution of a decree or order of the civil court (section 79, clause 5). Any ryot otherwise evicted will have a remedy under section 9 of *The Specific Relief Act*, 1877, and will be able to recover possession under these provisions. We have provided that the right to eject for non-payment of rent of any one year shall be deemed to be waived by the receipt of rent for a subsequent year. There are in the existing law no provisions as to the *away-going crop;* and, as a natural consequence, when a tenant is ejected while the crop is on the ground, the right to this crop is a constant source of dispute and litigation. We have enacted that when a ryot is ejected in execution of a decree—and this we have just shown is the only way in which he can be ejected—and there are upon the land at the time of the ejectment growing crops or other ungathered products of the earth, which but for the ejectment such ryot would have been entitled to reap or gather, such ryot shall notwithstanding such ejectment, be entitled to reap or gather such crops or products, and may use the land for the purpose of tending, reaping, gathering and removing the same; and in the event of his doing so, he shall be liable to pay a reasonable sum for the use and occupation of the land for these purposes (section 80). We have, however, thought it reasonable to allow the landlord an option of taking such crops or products at a reasonable valuation, if he gives notice of his intention to do so at the time when he applies for execution. If the landlord and tenant cannot agree as to the value of the crops or products, the court may, upon the application of either of them, determine such value, and the order so determining such value shall have the force of a decree.

Chapter XII special provisions for Behar.

Report of the Behar Committee considered.

Points of difference between Behar and Bengal.

§ 146. In forming an opinion as to what legislative changes are specially required for Behar, we have carefully considered the Report of the Committee appointed[1] to examine the question of the Rent Law for that province together with the Minutes of the Committee's proceedings. Behar differs from Bengal in two important respects: The *first* point of difference is that, while rent is commonly paid in money in Bengal, such money-rent having no direct connection with the quantity of produce, gross or net, it is paid in many district in Behar either actually in kind or in the commuted value of a fixed portion of the gross produce.[2] One direct and necessary result of the Behar system is that the

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[1] See No. 2122 of the 7th September 1878 from the Secretary to Government of Bengal appointing the Committee, and No. 214 R, of the 8th March 1879, from Commissioner of Patna, forwarding the report of the Committee.

[2] Under the *Agore Batai* system the crop is actually divided and the landlord's share made over to him. Under the *Danabundi* system the ryot agrees to pay the landlord the market-value of a certain proportion of the produce; the crop is valued at each harvest and rent is paid in money according to this valuation. For further information see letter No. 1130 of 21st August 1858, from Commissioner of Patna, to Secretary to Board of Revenue, the following paragraphs of which are important:—

"4. The second amendment which I propose has also regard to this class of cases. It is of the utmost importance to the ryot that it should be settled between his landlord and himself before he commences his cultivation, how the produce in which they have a joint interest is to be dealt with. Under one system (Agore Batai) the landlord employs men to watch his share of the crop when it approaches maturity, and when it is ready, cuts and carries it himself. In a more common variety of the same tenure, the crop is cut and threshed by the ryot under the superintendence of the zemindar's servants, and the produce divided on the threshing floor; but it is also matter of arrangement between the parties in this case whether the landlord shall have the straw or only the grain, and whether it shall be delivered at the threshing floor or the ryot's village, or at some other place more convenient to the zemindar.

"5. In the Bhaolee and Danabundi tenures, which in the districts of Shahabad and Behar are more common than any others, there is even more room for dispute. In 1849, and again in consequence of a despatch landlords get the full benefit of every rise of prices, and enhancement on the ground of increase in the value or price of the produce, is a stern reality to the ryots of Behar. The *second* point is that, while in Bengal the ryots are the stronger and the landlords the weaker party, in Behar it is just the reverse, the ryots being (save in some exceptional places) in a depressed condition and incapable of maintaining against their landlords the ryots given them by law. It is possible that there is some connection in the nature of cause and effect between these two points of difference. The Behar system is really a *metayer* system with most of its worst features and few of the advantages enjoyed by tenants of this class in continental Europe. The European metayer is usually secure in the possession of his land, and is certain at least of half the gain resulting from any improvements which he makes by his own labour or capital. His landlord furnishes half the plough-cattle in some places, and in others half the seed. In many places a house is kept up for him. Thus, he receives considerable assistance towards producing the crop in which he and his landlord are sharers. The Behar ryot, on the contrary gets nothing but the bare land : his possession is insecure, and he has no incentive to improvement, while the petty oppressions practised in collecting a rent in kind leave him too often less than half the crop, the whole cost of producing which has fallen upon him alone.[3] Then the *ticcadari* or farming system, under which the landlords who should protect their tenantry and take an interest in their welfare make them over to be ground down by *ijahradars* or farmers, exercises the most pernicious influence on the condition of the cultivating class in that part of the country.

The Behar system a bad metayer system.

Impoverished condition of the cultivating class in Behar.

Recommendations of the Behar Committee.

Proposal that landholders should file accounts in a public office.

§ 147. It will be convenient to consider in order the recommendations of the Behar Committee. They propose in the first place, to make it obligatory on landholders to file annually in the office of the Collector, or some other public officer, accounts showing (1) the serial number of each ryot, (2) the name of each ryot, (3) the area of land held by him, and the area of the portions thereof for which he pays rent in money and in kind, and (4) the details of each separate annual demand on each ryot, and the total thereof. They say—

> " It is held by some of us that ryots by taking copies of these accounts can be certified of the arrears of their holdings the rates claimed, and the annual demand upon them : others of us are of opinion that any such extracts would in practice have to be repudiated by the ryot."

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from the Court of Directors in 1851, these tenures formed the subject of a voluminous correspondence. I append three of the most interesting letters which were written on that occasion, in order that those members of the Legislative Council who are not acquainted with the controversy, may become acquainted with its bearings and be made aware of the importance of the subject.* It will be seen from a perusal of these papers how very necessary it is that the contract between the landlord and his tenant in these Danabundi leases should be accurately defined. With this view I would propose that, in addition to the amendments in Section II which I have suggested above, the following provisions should be adopted either in the form of a new section or as a pendent to Section II. ' If the tenure be of the kind termed Bhaolee or Danabundi, or any similar tenure in which the ryot engages to pay the landlord the market value of a certain proportion of produce, the pottah shall also specify the market and the month, of which the average rates are to govern the contract, and the date on which the rent shall be considered due.'

* Regulations II of 1795 should also be consulted, as it contains a great deal of information on the subject.

" 7. It may very probably be thought by those who have had no experience in this part of the country that payment in kind or the mixed payments which form the peculiarity of the Bhaolee tenure, should be discouraged as much as possible, and should not be sanctioned by the Legislature, but this would be a very great error. A large portion of the land of this province is entirely dependent on rain for its fertility. In good seasons it yields heavy crops, in bad ones next to nothing ; and bad or indifferent seasons are more common than good ones. The ryots, having no capital and being an improvident race, would be ruined by one or two bad seasons, if they had to pay fixed money rent. Under a Bhaolee or Batai system on the contrary, where the rent is proportioned to the produce, they can always rub on, and if they have not much opportunity of making money, they are tolerably secure from ruin. These tenures are therefore very popular, and, when the landlord is a just man, are perfectly satisfactory to all parties. Any attempt to abolish them would create great discontent. The only complaint is that owing to the defect of the law, the ryot who holds under these tenures is now practically at the mercy of his landlord.

" 18. In Bhaolee cases all my informants here are agreed on the necessity of compelling the production of the Danabundi or estimate papers. In order to render this intelligible, it may be necessary to explain the process of a settlement of accounts under the Bhaolee system. When the crop is ripe the patwari, the gomashta, the *amin*, a *jareeb kush* or measurer, a *salis* or arbitrator, a *navisinda* or writer, and the *jet ryots* of the village with the ryot himself proceed to the field in which the crop is growing. The *salis* first makes an estimate of the produce ; the *amin* then makes another. If the two estimates agree, the matter is considered settled. If they differ, the ryots cuts a cottah where the crop is thinest ; the zemindar's people cut another where it is heaviest. The produce is threshed out, mixed together, and weighed, and the produce of the whole field is estimated from this sample. A memorandum of the result, called a Danabundi, is made out by the patwari and his writer, and signed by those present. The ryot is then at liberty to cut and store his grain. The putwaree next prepares a paper called a ' Behree,' showing the amount of grain in the possession of the ryot and the respective shares of the malik and the ryot, and sends for the malik's share, which the ryot either pays in grain or money, as may have been agreed upon. If the agreement is to pay in money, the gomashta writes to the amlah of the surrounding villages for the nirik, or market rate, which is returned on the back of his letter and an average is then struck. It will thus be seen the accounts of the estimate of the crop and its weighment form the chief evidence in these Bhaolee cases and that a jamawasil account is of comparatively little use.

[3] Mr. Dampier is unable to subscribe to the contrast drawn in the above passage.

They further propose that—

> "The filing of these accounts should be enforced by dismissing rent suits, unless the plaintiff file with the plaint a deposit receipt for his yearly accounts, or unless he otherwise prove to the satisfaction of the court that such accounts have been duly filed in the rent-roll office."

Proceeding, p. 5.

We have duly considered this matter for Bengal, and have come to the conclusion that it is not practicable to compel landlords to keep their accounts in any particular form, or to file them periodically in the Collector's office with such method and punctuality as to make it really worth while to impose so onerous an obligation on Collectors and zemindars. In a report recently submitted by the Commissioner of Patna to the Board of Revenue on the subject of *patwaris* in Behar, the Commissioner, after thoroughly examining the question, gives his opinion that the rules requiring *patwaris* to furnish their accounts should be rescinded. The Collector of Shahabad and the Collector of Chumparun are of the same opinion. Legislation in this direction has already been tried in this country and has failed. If such a rule of law as that proposed by the Behar Committee were enacted, it would be difficult to enforce it. A reasonable sanction is wanting. The individuals who might suffer for not filing accounts or be punished for filing fabricated accounts, would receive, not the odium attaching even with the uneducated to the violation of a natural law, but the sympathy accorded to those who have resisted an unjustifiable command—for such the land-holding community would regard an enactment, the immediate result of obeying which would be to make public the private concerns of every landlord. The construction of record-rooms to contain such accounts, if filed, and the maintenance of establishments to keep them in order would necessitate expenditure for which, in our opinion, there would be no adequate return in the equivocal advantage which might result to the rent-paying class. There is nothing in the circumstances of Behar which leads us to think that we ought to adopt a different conclusion for that Province.

Proposal to declare "Jamabandis jamawasil-bakis", &c., inadmissible in evidence.

§ 148. We find ourselves also unable to concur in the suggestion of the Behar Committee "to exclude from evidence loose sheets of paper produced from the *patwari's* or *zemindar's* sherishta, such as *jamabandis*, *jamawasil-bakis*, and other papers of that kind." In making this suggestion the Committee hazard an opinion of their own that even under the present law such papers should not be received in evidence. If they are not admissible in evidence, as the law stands, it is not necessary to legislate further in order to make them inadmissible, irrelevancy not being a quality that admits of degrees. All civilized countries have abandoned the attempt to settle by legislation the value of evidence once received, or to define by too nice rules what evidence may be received and what must be rejected. We do not think that we shall on the present occasion be assisted by the revival of exploded theories. The difference between admitting matter in evidence and the weight which may fairly be assigned to it when admitted has long been recognized, and has been acted on in the Indian Code. The degrees of weight are infinite, varying from the thistle-down, that will scarcely turn the nicest balance, to the ponderous weight of the Earth itself. Between the carefully-kept books of an English bank, which containing within themselves a thousand tests of genuineness may further be verified by innumerable external facts, and the loose slips of a Native *jamabandi*, which may be prepared in half an hour and can be tested by few external or internal *indicia* of truth, there is as much difference in value as between a numeral in the place of thousands and the same figure in the fourth place of decimal fractions. We think that the courts must be left to see this for themselves, and to assign to *jamabandis*, *jamawasil-bakis*, and other such accounts the exact weight to which they may fairly be entitled in particular cases, according to the obvious care with which they are kept, and the tests of genuineness which they contain within themselves, or which may be available from external sources. As a matter of fact, the published reports contain numerous cases showing that these tests are understood and applied. Before leaving this point we desire to point out, with reference to a remark upon section 34 of the Evidence Act, that, although entries in books of account regularly kept in the course of business are under that section relevant whenever they refer to a matter into which the court has to inquire, the section further enacts that they shall not alone be sufficient evidence to charge any person with liability.

Opinion of the Behar Committee as to compulsory interchange of pottahs and kabooliyats.

§ 149. Upon the subject of pottahs and kabooliyats, the Behar Committee say—

> "We fear that any attempt to render the interchange of any specific form of pottahs and kabooliyats compulsory would lead to general litigation and strife; that it would embitter the relations of landlord and tenant in Behar; that in the end it might possibly injure, rather than improve, the ryots' condition. Moreover, the compulsory interchange of pottahs and kabooliyats in any express statutory form would involve an enormous increase in the number of registration offices and civil courts, which we do not feel ourselves prepared to recommend. On this head Mr. Browne has made a recommendation, to which the Committee has acceded, namely, that whenever a court decrees rights of occupancy, it shall compel the interchange of pottahs and kabooliyats, specifying the boundaries of the fields in which such rights are decreed."

This coincides generally with the view which we have adopted (paragraphs 7 and 8 above). Mr. Brown's recommendation will be sufficiently met by the provisions of section 151 of the draft Bill as to suits for the determination of the terms or conditions of the tenancy, when read with the provisions of section 167 and with the similar provisions of *The Code of Civil Procedure* as to the particulars to be inserted in plaints. The decree must, under the provision of clause (*c*), section 195 of the Bill, reproduce the essential particulars given in the plaint; and a copy of the decree under the seal of the court (a form of document much prized by the natives of this country) will take the place of a pottah for the tenant, and of a kabooliyat for the landlord.

Use of counterfoil receipts for rent.

§ 150. A majority of the Behar Committee are of opinion that the use of counterfoil receipts for rent should be insisted on. They think that—

> "Receipts should be in counterfoil, and that the refusal or neglect on the part of the landlord to give a counterfoil receipt in the prescribed form should be deemed a withholding of a receipt;" also "that a suit for rent should not be entertained unless the plaintiff file with the plaint a receipt-book for the period in respect of which the rent is claimed, or for such additional period as to the court may seem necessary."

We have provided (section 57 of the draft Bill) that a tenant is entitled to a receipt containing certain essential particulars, and also to a statement of account at the end of the year; that the landlord shall retain a counterpart of every such receipt and statement of account; and that failure to furnish such a receipt or such a statement may be punished by a penalty. We are not prepared to recommend that the law should go further, or that suits for rent should be dismissed unless the counterfoil receipt-book is filed with the plaint. We think that the inference to be drawn from the non-production of such evidence, and the value of it when produced, are matters which must be left to the courts themselves to be dealt with under the circumstances of each particular case, and that it would a be mistake on the part of the Legislature to attempt to regulate them by any artificial rules of general application.

Recommendations of the Behar Committee as to cheapening and facilitating registration.

§ 151. With a view to cheapen and facilitate registration, the Behar Committee recommend (1) that the registration law should be so amended as to allow a party to file a copy of a deed, and so escape the delay, inconvenience and expense of having a copy made in the registration office for record therein; and (2) that sub-registrars should be allowed to go into the interior to register documents without the issue of a commission as required by the present law. These recommendations are probably deserving of consideration, but we think that the matter of them does not fall within the purview of our labours.

Ryots unable to acquire a right of occupancy in Behar in consequence of constant changes in the occupation of the fields cultivated by them.

§ 152. One of the greatest difficulties connected with the acquisition of a right of occupancy by ryots in Behar arises from the fact that, owing to causes originating in local practices, ryots seldom hold the same fields for twelve years continuously, and therefore, according to the strict letter of the present law, the right of occupancy does not accrue. The Committee say in their Report—

> "The amalgamation and sub-division of holdings in Behar, taken in connection with the zemindar's failure to give pottahs, have made it difficult for ryots, who *de facto* have occupancy rights, to prove the existence of such rights. An examination of the *jamabandi* papers of Behar estates has shown that, while sixty per cent. of the present ryots have held some land in the villages in which they reside for more than twelve years, less than one per cent. of them hold at present the same area of land which they held twelve years ago. Inasmuch as these ryots hold no pottahs or other documents showing which are the particular fields which they have held for more than twelve years, and which fields were subsequently acquired, it is doubtful whether any of them could under the existing law prove their occupancy rights, even where these rights exist beyond all doubt . . . . To remedy this evil we propose to make

> more clear than it is at present the presumption of law that every resident ryot who has cultivated *any* land continuously in any estate for twelve years shall be held to have acquired occupancy rights in the whole of his holding in such estate. The effect of this presumption will be that on a ryot having proved continuous residence and cultivation of any land whatever in an estate for twelve years, the *onus* of proving that such ryot has not acquired occupancy rights in the whole or any particular part of his holding will be thrown on the zemindar."

We are satisfied that the above passage points to a serious defect in the present law, so far as Behar is concerned. The practice of periodically changing the fields cultivated by individuals is a very old one in India. It was followed by the old village communities, and we now know that periodical partition of the land belonging to the community was a very general custom in the ancient world, and that vestiges of it still remain even in the most civilized countries of modern Europe. Even after the village community had ceased to exist as an institution, it was not uncommon for the cultivator, where land was abundant and population sparse, to abandon land which had been cultivated for two or three years, and the productive powers of which, unsustained by manuring or any system of rotation of crops, had thereby become diminished. As population presses closer on the land, this practice gradually ceases. Whether the state of things described as existing in Behar is a remnant of the old custom,[1] or is the result of some other cause, it is a special feature in the circumstances of this province which ought not to be overlooked in any new legislation intended to affect this part of the country. When Act X of 1859 enacted that "every ryot who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him", it overlooked and omitted to provide for a state of things peculiar to Behar, and we think that the proper course is to recognize this now and supply the defect. We propose to meet the difficulty by providing that all ryots who on a certain date (to be hereafter notified) are in possession of land other than *zerat* land, and have been for three years continuously in the possession of the same, shall have a right of occupancy therein, if they have for twelve years held *any* land in the same estate, or in any other estate which with it at any time formed a single estate (see section 81 of the draft Bill). We take the occupation of some land for twelve years to be an indication of intention to become a resident ryot, and in view of the peculiar state of things in Behar, we have cut down the period of occupancy from twelve to three years. These special provisions will apply only to the state of things existing on the particular date notified. The acquisition of a right of occupancy in the future is intended to be governed by the ordinary provisions of the Bill. It may, however, deserve discussion whether three years ought not in future to be held sufficient to confer a right of occupancy in Behar.

Definition of zerat land.

Ryot to have a right of occupancy in land received from his landlord in exchange for land in which he had a right of occupancy.

§ 153. We have adopted the definition of *zerat* land recommended by the Committee, and taken from the definition of *sir* land in *The North-Western Provinces Rent Act XVIII of* 1873. This, they think, will prevent any recurrence of a practice, said to be not uncommon in certain parts of Behar, of landlords violently wresting part of their lands from ryots, or of exchanging *ryoti* for *zerat* lands, and then entering both as *zerat* in the *jammabandis*. In order to provide for exchanges of land which may be made in future with the consent of the ryots, we have enacted (section 82) that when land is so exchanged a ryot shall have in the land which he gets in exchange the same right of occupancy which he had in the land given by him in exchange. If the land is exchanged against his will, he can seek redress in court.

Points upon which it is not thought advisable to make any difference in the provision for Bengal and Behar.

§ 154. We have attentively considered the recommendations of the Behar Committee upon the following subjects: The ejectment of ryots not having a right of occupancy, compensation to evicted ryots for improvements made by them; transferability of a right of occupancy; the right of occupancy-ryots to sub-let; amendment of the law of distraint; alteration and improvement of the law of enhancement; summary procedure for the recovery of rents; the settlement of rates by the Collector in cases of dispute; the instalments in which rent shall be payable; the measurement of lands by persons in receipt of the rent of the same; the insertion of boundaries and areas in plaints filed for the recovery of arrears of rent; and the deposit of rent by tenants, when a dispute exists as to the person entitled to receive such rent. The members of the Committee are not unanimous in the recommendation contained in their Report as to some of these matters; and indeed upon certain points, as, for example, the subject of procedure, individual members appear to have entertained opinions diametrically opposite. Most of the defects noticed in the existing law, in connection with these subjects, are common to Bengal and Behar; and we think that in amending the present law the two provinces may properly be treated alike. We therefore consider that the provisions to be found in the Bill on these points are suitable and sufficient to meet the requirements of Behar.

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[1] Mr. Dampier doubts the special applicability of these remarks to the state of things now found existing in Behar.

Recommendations of the Behar Committee in connection with the system of payment of rent in kind.

§ 155. In connection with the system of payment of rent in kind commonly prevalent in Behar, the Committtee recommend—

- *1st*—that in case of dispute as to the amount of value of the crop the Collector shall, on application from either party, depute a proper officer to make the division, estimate, or appraisement;
- *2nd*—that the *danabundi* or appraisement papers shall be filed in the Collector's office within fifteen days after the appraisement;
- *3rd*—that, where a tenant without due cause allows *bhaolee* lands to lie fallow, he shall be liable to pay a cash rent for such lands in respect of the period during which the land was fallow, such cash rent not to exceed that paid for the same description of land in the neighbourhood;
- *4th*—that, where occupancy rights have been established, the occupancy ryot or the zemindar shall be entitled to commute *bhaolee* into cash tenures at the cash rates paid by other occupancy ryots in the neighbourhood, and, if cash tenures do not exist in the neighbourhood, at a cash rate equivalent to the average value of the zemindar's share of the produce calculated on the outturn of the preceding five years;
- *5th*—that, where proportion of the produce to be taken by the zemindar is not specified in any written agreement, it shall be presumed that the zemindar is entitled to half and the ryot to half.

We have accepted the first and second of these recommendations in their entirety, and they will be found embodied in sections 84 and 85 of the draft Bill. District officers might be well asked if any similar provisions are required in Bengal. We are unable to concur in the third recommendation. We think it probable that the right of selecting the fields which he shall cultivate or leave uncultivated each year is one of the incidents which enables the ryot of South Behar to pay so high a rent as one-half of the gross produce for his land. With the information now before us, we are, therefore, not in a position to support this recommendation of the Behar Committee. The *fourth* recommendation we have accepted with a slight modification, and it will be found embodied in section 86 of the Bill. A majority of us think that the abuses incident to the receipt of rent in kind can best be obviated by its commutation into a money-rent, and that the option given to the people of so converting it is calculated to encourage agriculture.[1] Mr. Dampier is opposed to making commutation compulsory on the ryot.[2] We have also accepted the *fifth* recommendation as far as it goes, but we have gone further and have provided that in no case shall the proportion of the actual produce to be taken by the *zemindar* as rent be more than one-half.

Objects of legislation for Behar.

§ 156. It appears to us that the most important objects of legislation for Behar are to protect the ryots from illegal distraint, illegal enhancement, and illegal cesses; to enable them to maintain their rights of occupancy; and to suppress various modes of oppression incident to the collection of rent in kind, or in the commuted value of a share of the produce determined by an estimate or appraisement of the standing crop, or by some similar proceeding. We think that the special provisions for Behar contained in Chapter XII will, taken with the other provisions of the Bill, effectuate these objects as far as they can be effectuated by legislation.

Damages and penalties.

§ 157. The provisions of Chapter XIII as to damages and penalties require few observations, as they are substantially a re-enactment of the provisions of the existing law. Damages may be awarded (1) for the illegal exaction of any sum of money in excess of the rent lawfully payable; (2) for withholding receipts for rent paid; and (3) for extorting payment of rent by duress. We have retained that portion of the law which empowers the courts to award damages not exceeding twenty-five per cent. upon rent not paid or deposited, when the tenant can show no reasonable or probable cause for having neglected to pay such rent. We have made it clear in accordance with the decisions, (*a*) that interest before decree upon the rent decreed may not be given in addition to these damages, and (*b*) that damages when awarded may, as well as the amount of rent and costs decreed, carry interest at the rate of six per cent. per annum until realized. We have also retained the existing provisions as to the court's awarding to defendants twenty-five per cent. by way of damages upon rent claimed without reasonable or probable cause, or sued for after it had been duly deposited in the Collectorate.

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[1] "Grain is the standard most familiar to the people, and therefore most likely to attain earliest accuracy and moderation; whilst its commutation for money prevents all the abuses incident to its receipt in kind; and the option left to the people to commute it in perpetuity or periodically affords every possible encouragement to agriculture."—*Mr. Campbell's Paper. Appendix to Report of Select Committee of* 1832, p. 56.

[2] Mr. Dampier's reasons are the same as those to be found in paragraph 7 of the letter of the Commissioner of Patna printed as a foot-note to § 146 of this Report.

Limitation—schedule of suits and application between landlords and tenants.

§ 158. We have collected in a schedule framed on the model of that annexed to *The Indian Limitation Act*, XV of 1877, the suits and applications between landlords and tenants, for which a special rule of limitation has existed since 1859, and we have made a few additions to the list. We have provided that one year shall be the period of limitation for a suit by a ryot against his landlord to recover the possession of a holding, from which such ryot has been illegally ejected by such landlord in any case not governed by section 9 of *The Specific Relief Act*, I of 1877; in other words, for a suit intended to try not merely the question of dispossession without consent, but also the question of title. For a similar suit by a tenure-holder or under-tenure-holder we have provided a limitation period of three years. We have enacted that every suit instituted and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. This is in accordance with the principle followed in the legislation of the Government of India.

Portions of *The Indian Limitation Act* especially extended to rent suits.

§ 159. We have expressly extended to suits and applications under the proposed Act the following portions of *The Indian Limitation Act*, XV of 1877, namely (*a*) the explanation to section 4, *viz.*, that a suit is instituted in ordinary cases when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue is filed; and in the case of a claim against a company which is being wound up by the court, when the claiment first sends in his claim to the official liquidator; (*b*) section 5 as to a suit or application, the period of limitation for which expires on a day when the court is closed, being admitted on the day that the court re-opens; and as to an appeal or application for a review of judgement being admitted after the period of limitation, when the appellant or applicant satisfies the court that he had sufficient cause for not presenting it in time; and (*c*) the whole of Part III relating to the computation of the period of limitation.

A special law of limitation for rent cases since 1859—Points in which it differed from the general law.

§ 160. Since 1859 there has been a special law of limitation applicable to rent cases. Before the passing of the present general Limitation Act, XV of 1877, this special law differed in some important particulars from the general law, namely,—

(1) contrary to the provisions of the general Limitation Act, when the period of limitation expired upon a day upon which the court was closed, no deduction of time was allowed and the suit might not be instituted on the day that the court re-opened:

(2) contrary to the provisions of the general Limitation Act, the time might not be deducted, during which a plaintiff was conducting with due diligence another civil proceeding founded on the same cause of action, and prosecuted in good faith in a court which from defect of jurisdiction or other cause of a like nature was unable to entertain it:

(3) contrary to the provisions of the general Limitation Act, no deduction of time was allowed for legal disability, *i. e.*, minority, lunacy, idiocy:

(4) contrary to the provisions of the general Limitation Act, time was to be computed according to the English calendar:

(5) by a parity of reasoning to that upon which the above propositions are based, the provision of the Limitation Act, which in the

computation of the time allowed for appealing permitted a deduction of the time necessary for procuring a copy of the decree and judgment of the lower court, had no application to rent cases, although this time was deducted upon the authority of a circular order of the Sadr Court.

§ 161. Section 6 of the Limitation Act (IX) of 1871 enacted as follows:—"When by any law not mentioned in the Schedule hereto annexed and now or hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is especially prescribed for any suits, appeals or applications, nothing herein contained shall affect such law." Acts X of 1859 and VIII (B. C.) of 1869 are Acts not mentioned in the schedule here specified, and it was accordingly held that nothing contained in Act IX of 1871 affected these Acts; therefore the rules as to the computation of the period of limitation contained in Act IX did not affect or apply to rent suits. Section 6 of the present Limitation Act (XV of 1877), corresponding with section 6 of Act IX of 1871, is couched in different language, *viz.*,—"When by any special or local law now or hereafter in force in British India a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed." It has been held (I. L. R. 5 Calc. 110) that the effect of this change in the language used is that the rules prescribed by Act XV of 1877 for computing the period of limitation are applicable—apparently on the ground that rules for computing the period of limitation do not affect the period itself. If this decision is accepted as conclusive, it may be unnecessary to extend Part III by special words to rent suits, for the whole of this Part (*i. e.*, sections 12 to 25, inclusive) is concerned with the "computation of the period of limitation" as appears from the heading thereto. We have thought it safer, however, to follow the decision and enact this in express words. After due consideration we have come to the conclusion that it is inadvisable to extend to rent suits the allowance of time for disability. We think that a minor ought not to be competent on coming of age to sue a ryot for rent which had accumulated during the whole period of his minority; that this kind of debt, which a poor man usually discharges year by year out of the produce of the year, ought not to be allowed to accumulate; and that if the manager of a minor's estate neglects his duty of realizing rents as they fall due, the minor's remedy ought to be an action for damages against such manager.

Computation of time where, until termination of litigation as to their mutual rights, landlord could not previously have sued tenant for rent.

§ 162. We have provided (section 94) that when the result of litigation between any persons is such that they are found to stand in the relation of landlord and tenant to each other and to have stood in this relation while such litigation was pending, but, until their mutual rights were finally determined by such litigation, such landlord was unable to sue such tenant for rent, the period of limitation for suing for any such rent shall be computed from the termination of such litigation. We invite criticism to this attempt to formulate a principle, not very susceptible of definite expression. The object we have in view will be rendered more intelligible by some reference to the cases concerned with the application of the principle. In *Rani Swarnamayi* vs. *Shashi Mukhi Barmani*, &c., (12 Moor. In. Ap. 244; S. C. 2 B. L. R. P. C. 10) the facts were—A *zamindar* had brought a *patni* tenure to sale under Regulation VIII of 1819. The *patnidar* was thereupon ousted, and the purchaser took possession of the *patni* tenure. The *patnidar* then successfully sued to have the sale reversed on the ground of irregularity, and recovered possession of the *patni* tenure together with mesne profits from the purchaser for the period of his possession. The *zamindar* subsequently sued the *patnidar* for rent for this period. Such rent was barred, if the period of limitation contained in Act X of 1859 were to be applied without qualification. The Privy Council, however, held that it was not barred; that the cause of action accrued at the time at which, the sale having been set aside, the obligation to pay this rent revived; that the *patnidar* on being restored to possession took back the estate subject to the obligation to pay the rent, and that the particular arrears must be taken to have become due in the year in which that restoration to possession took place. Two points are to be noticed here. *First*, the zamindar could not sue the patnidar for the rent as long as the latter was out of possession: *Second*, the *patnidar* received mesne profit for the period for which rent was claimed. From this case were distinguished some subsequent cases in which, although the landlord had denied the continuance of the relation of landlord and tenant and had attempted to put an end to such relation, the tenant was nevertheless not dispossessed, and there was in consequence nothing to prevent the landlord from recovering the rent. In these cases, although one element, *viz.*, receipt by the tenant of the profit of the land, was present, the other element, *viz.*, inability of the landlord to sue was wanting (See I. L. R. 3 Calc. 6, 791, 817).

Summary sale for arrears of rent without decree. Incorporation of the Patni Regulation.

§ 163. We now come to the Second Part of the Bill which contains the Adjective law or Procedure. The first Chapter of this Part, namely Chapter XV, is concerned with proceedings to enhance the rent payable in money by ryots having a right of occupancy or by tenure-holders or under-tenure-holders. We have already fully considered these provisions in discussing the subject of enhancement, this being more convenient than to deal with them in the order of the arrangement of the Bill. Chapter XVI treats of the recovery of arrears of rent in certain cases by summary sale without decree, and is, in fact, a re-production of the patni Regulation VIII of 1819. The original language of the Regulation has been retained as far as possible, and this will account for some difference in the form of expression between this Chapter and the rest of the draft Bill Some alteration of the arrangement of the matter has been necessarily made, and some additions have been made, incorporating the result of the decisions upon important questions raised upon the Regulation. As the law now stands, this procedure can be used only by "proprietors" of revenue-paying estates and in respect of *patni tenures and other tenures upon which the right of selling or bringing to sale for an arrear of rent has been specially reserved by stipulation in the engagements interchanged on the creation of such tenures.* Whether this procedure should be extended to other tenures, or to under-tenures and even occupancy holdings, is a question which may deserve consideration. Some of us have suggested a certain extension, but the majority are opposed to putting this summary procedure into the hands of any other than the superior landlords. The tenure-holders to whom the law now applies are persons of means, able to vindicate their own rights, if unjustly infringed. The proprietors of revenue-paying estates, who may use the law, are persons of substance, against whom a decree for damages can be effectually enforced. It is extremely rare to hear even the allegation that a tenure has been brought to summary sale without arrears being *bonâ fide* due; and the invariable ground upon which it is sought to set aside these sales is irregularity in the publication of the notices. This publication, it may be observed, generally depends upon men of subordinate position, not very accurate in transacting business and not generally supposed to be above corruption. So far as these summary sales depend upon the acts and volition of the landlords, there is little reason to suppose that the procedure is abused. There may be grave doubts whether the result would be equally satisfactory if the same procedure were entrusted to petty landlords to be put into operation against tenants not always in a position to avail themselves of the aid of the law against oppression.

Question of extending this procedure to other tenures and under-tenures, &c.

Is provision required when day of application or day of sale falls on a holiday?

§ 164. According to the Regulation—and we have made no change in the Bill—these summary sales take place twice a year, namely, on the 1st Jeyt and on the 1st Aghan. Application for sale is made on the 1st Baisakh and on the 1st Kartik. If these dates happen to fall on a holiday, there is no express provision that the application may be made, or that the sale may take place upon the next open day. We have not inserted any such provision in the Bill, because no case has occurred within our experience, or has been brought to our knowledge, in which hardship has resulted from the want of it. We invite attention to the point, however, as for reasons, which are not before us, it may be desirable to have a precise rule on the subjet. The only change which we have made in the provisions of the Panti Regulation is that we have allowed the defaulting tenure-holder whose tenure has been advertized for sale to lodge the amount of the arrear in the Government Treasury up till sunset of the day preceding the advertized day of sale. Under the law, as it now stands, the Collector is not bound to receive the arrear of rent except in two cases, *viz.* (1) when the defaulter has applied for a summary investigation (see section 137 of the draft Bill); (2) when an under-tenure-holder

Amount of arrear may be lodged in the Collectorate before sunset of the day preceding day of sale.

desires to pay the amount in order to prevent the sale and protect his under-tenure from the risk of being avoided (see section 138 of the draft Bill). In these two cases the amount of the area may be deposited on the day of sale and at any time before the time of sale. It has, however, happened that the amount has been deposited in the Collectorate in cases other than the above; and that the person who so deposited it was under the impression that he had thereby prevented the sale of his tenure; whereas, in fact, he had not done so, inasmuch as the money should have been paid to his landlord, and a deposit in the Collectorate was no legal bar to the sale. In the particular case to which we allude the tenure was sold and the tenure-holder had no remedy. We have thought it advisable to prevent the possibility of a recurrence of this hardship by allowing the amount of the arrear to be lodged in the Collectorate in every case. We have at the same time cleared up a point, as to which there has been some doubt, by declaring that the money must be paid to the landlord or lodged in the treasury (in cases other than the two exceptional cases just stated), *before sunset of the day next preceding the day of sale*, otherwise that the sale shall not be stayed or postponed.

Save where Bill otherwise provides, Code of Civil Procedure to apply to suits between landlords and their tenants or agents.

Sarbarakars and Tehsildars.

Naibs and Gomashtahs.

§ 165. Chapter XVII contains certain special rules of procedure applicable to suits between landlords and their tenants or agents. It is declared (section 147) that, save where the Bill otherwise provides, *The Code of Civil Procedure* shall apply to all suits brought for causes of action arising between landlords and their tenants or agents; and (section 148) that the cause of action in all such suits shall be deemed to have arisen within the local limits of the jurisdiction of the civil court, which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant or the agency exists between the parties. This latter provision proceeds upon the lines of the present law. We have retained the existing provisions as to *surbarakars* and *tehsildars* suing and being sued, and have extended them to managers under the Court of Wards; but we have provided (section 149) that all such suits shall be conducted or defended in the name of the Secretary of State for India in Council, or in the names of the private persons to whom the estates belong. We have also retained the provision of the existing law as to *naibs* and *gomashtahs*, if specially empowered thereto, acting as the authorized agents of their employers, although such employers are resident within the local limits of the court's jurisdiction. We think that the facility thus afforded to landlords is a reasonable one, which should not be taken away. At the same time we have thought it equally reasonable to provide in the interest of the ryots that the service of any notice under the Act upon any such naib or gomashtahs, or the tender to him of any money or fee, shall be as valid a service or tender as if the service had been made upon, or the amount or fee tendered to, his employer (section 150).

Suit for the determination of the conditions' of a tenancy.

§ 166. We have already (*ante* § 8) stated the reasons which have influenced us in doing away with suits for pottahs and kabuliyats, and substituting therefor a simple suit for the determination of the conditions of the tenancy. Either landlord or ryot may sue for the determination of all or any of the following matters:—(*a*) the quantity of land held by the ryot; (*b*) the amount of annual rent payable for such land; (*c*) the class to which the ryot belongs (section 156).. The plaint must contain the plaintiff's allegation as to each of these matters, this being necessary for purposes of pleading and for determining the party on whom the burden of proof shall lie. We have provided that no suit shall be dismissed because the plaintiff fails to prove exactly the allegations made in his plaint. The necessity of proving the exact terms of the *kabuliyat* has destroyed the efficacy of a suit for a *kabuliyat* under the existing law; and we desire to prevent the mofussil courts from the error of perpetuating this result. Whatever may be the allegations in the plaint, the court shall proceed to ascertain and declare the actual facts of the tenancy.

Ejectment for non-payment of rent.

§ 167. The provisions as to a claim for ejectment being included in a suit for arrears of rent or being based upon an unexecuted decree for arrears, and as to a stay of ejectment, if the decree for arrears is satisfied within fifteen days, are taken from the existing law; but we have appended two *explanations* which embody the results of the decided cases: *first*, that the judgment-debtor is entitled to the benefit of this fifteen days' rule, even though the lease contains a stipulation that it shall be void upon one or more instalments of rent falling into arrear, or upon the breach of any other condition as to payment of rent; *secondly*, that if the original decree is *altered or amended* on appeal or review, the fifteen days shall be computed from the date of the judgment on appeal or review; but if not altered or amended, then from the date of the original decree (section 152). We have made no change in the provisions of the present law as to immediate execution in certain cases of ejectment, and as to execution not being stayed pending appeal in such cases (sections 155, 156).

Suits for abatement of rent in what courts to be brought.

§ 168. An occupancy ryot is entitled to abatement of rent under the provisions of section 25, and a ryot who has held for more than three, but less than twelve, years is entitled to claim abatement under the provisions of section 31. We have provided (section 153) that suits for abatement of rent brought by ryots of these two classes, or, in other words, by any ryot who has held land for more than three years, may be instituted (*a*) when abatement is claimed on the first or second ground specified in section 25 in the civil court or before the Collector; (*b*) when abatement is claimed on the third ground specified in the same section, before the Collector only: provided that no such suit shall be instituted before the Collector unless at least ten ryots join in bringing it. We have allowed ten or more ryots to join in suing for abatement of rent, if they all pay rent to the same landlord, even though their holdings are separate. These provisions are the counterpart of the provisions as to enhancement. When abatement is claimed on account of diminished powers of production or diminished price of produce, the causes in operation affect a certain number of persons, and efficiency of decision, as well as economy of judicial agency, are obtained by the cases being tried together. Suits for abatement brought by tenure-holders, under-tenure-holders, and ryots holding at fixed rates of rent are to be instituted in all cases in the civil court.

Procedure

Abatement cases before the Collector are to be governed by the provisions of Chapter XV so far as they are applicable. Abatement cases in the civil court will be governed by the provisions of *The Code of Civil Procedure*.

When execution may be had against the person or against movable or immovable property.

§ 169. We have retained (section 154) the provision of the existing law that process of execution may not be issued simultaneously against person and property; but, subject to the rule that a tenure, under-tenure or occupancy holding must be brought to sale before any other process of execution can be obtained, we have allowed execution to issue against movable or immovable property, or both, thus altering the present practice under which execution can be had against the immovable property of the judgment-debtor only if satisfaction cannot be obtained against his movables. The first provision tends to prevent harassment, more especially in the case of ryots whose incarceration in a civil jail prevents them from cultivating their lands. If they have movable or immovable property which can be made available to satisfy the decree, imprisonment serves no useful purpose, and is in practice seldom resorted to. If they have property which they have concealed, imprisonment occasionally brings about a settlement. If they have no property, they can, if imprisoned, apply to be declared insolvent. As to the second point, we see no reason why any distinction should be made between judgment-creditors for rent and other judgment-creditors in respect of their being permitted to proceed against movable and immovable property indiscriminately.

No appeal from District or Additional Judge when value of suit does not exceed one hundred rupees, and no question of title has been decided.

§ 170. We have left the law of appeal in its present state, declaring that nothing in the Bill shall be deemed to alter the law as established by Act X of 1859 so as to confer a right of appeal in any suit tried and decided by a District Judge or Additional Judge originally or in appeal, wherein the amount sued for or the value of the property claimed does not exceed one hundred rupees, if no question of right to enhance or vary the rent of a ryot or tenant, or no question relating to title to land or to some interest in land, as between parties having conflicting claims thereto, has been determined by the judgment in such suit (section 157). We do not consider it desirable that any alteration should be made in the law, and we have here simply reproduced section 102 of VIII (B.C.) of 1869, the enactment of which has been decided by a Full Bench of the High Court not to be beyond the powers of the Bengal Council (I.L.R., 3 Calc. 151). The words "or Additional Judge" have been inserted in accordance with the decision of the High Court that a District Judge and an Additional Judge stand in the same category as regards these appeals (13 B. L. R., 376).

Suits against agents for money or accounts or papers—Law made applicable to all agents.

§ 171. We have made some important changes in the law concerned with suits against agents for money or accounts or papers. We have, in the first place, extended these provisions so as to include not only agents who collect the rents from the tenants, but also agents who receive the rents so collected and account for them to the landlord. In large estates it is very usual for one set of *amlah* to collect the rents in the *mofussil*, while another set at head-quarters keep the accounts, receiving the rents from those who collect them and retaining them in a treasury for disbursement as required. There has been some doubt as to whether the special provisions of the present law extend to this latter class of agents, and we have thought it desirable to remove this doubt, and make the procedure applicable to agents employed by landlords in the collection or *receipt* of rents, or the management of land. The present law speaks of "suits for the delivery of accounts," and it is not quite clear what is meant. In some cases judicial officers think it sufficient to give a decree for the annual delivery of certain accounts, *e.g.*, *jama-wasil-baki*, *baki-jai*, *&c.*, and consider it a sufficient compliance with this decree if these accounts be handed into court. The landlord has then to find out as best he may whether they are correct or not, and, if he can prove them to be incorrect, he has to bring a second suit for the recovery of the money which is owing to him upon correct accounts. It is clear that this is a very unsatisfactory methed of obtaining a remedy. In other cases the suit is valued at some imaginary sum, say, Rs. 500; and a decree is made for the delivery of the accounts *or* the payment of this sum, if they are not delivered, no attempt being made to ascertain if, on taking a proper account, this sum would be really due from the agent.

Unsatisfactory nature of the remedy afforded by the law in its present state.

Remedy provided for two classes of cases: (1) where lordlord knows what money or papers he ought to receive: (2) where, in consequence of agent not accounting, he does not know.

§ 172. We have endeavoured to make the remedy simple and effectual. There are, we conceive, two classes of possible cases: *first*, where the landlord knows the exact sum of money, or the specific accounts or papers which his agent ought to make over to him; *second*, when in consequence of the agent not having accounted, the landlord is unable to tell what amount has been received and is to be accounted for. The first case may easily occur where there are a few tenants, each paying a considerable amount of rent. The landlord knows what documents connected with their tenancy are in the hands of his agent, and can easily ascertain from his tenants the sums paid over by them to the agent. The second case ordinarily happens when there are a number of small tenants paying each an inconsiderable sum as rent, and it would be extremely difficult to ascertain from each the exact state of his account. In many instances an illiterate ryot is himself unable to say how he stands, and he trusts entirely to the *zemindari amlah* and their accounts. Then, again, the agent may be charged with all the disbursements connected with the collections, and, until these have been correctly ascertained, it may not be possible to say what balance is due to his employer. In the first of these cases the landlord is required to state in his plaint the exact sum of money which he claims, or to describe the accounts or papers which he demands, from his agent.

Procedure in the first class of cases.

Procedure in the second class of cases.

§ 173. The second case is not so simple. We here require the landlord to set forth in his plaint the fact that he is unable to ascertain the exact sum of money or the papers, vouchers or other documents in the hands of his agent, in consequence of such agent having neglected or refused to render proper accounts, and to pray the court that it will take an account from such agent and make a decree for the payment of such sum of money (if any) as may upon the taking of the account be found to be due and owing to the plaintiff, and for the delivery of such papers, vouchers or documents belonging to the plaintiff as may be found in the hands of the agent (section 161). Upon the filing of this plaint a summons issues to the defendant calling upon him to show cause why he should not render a full and satisfactory account of all sums received and disbursed by him, and of all papers, vouchers or other documents which may have come into his hands in the discharge of his duties as agent (section 162). If the defendant fails to show cause, or does not, in the opinion of the court, show sufficient cause why he should not render such an account, the court shall make an order requiring him to file such account in court, and shall fix a day on or before which such account shall be filed. This order, if disobeyed, may be enforced by imprisonment or by attachment of property or by both (section 163). When the defendant files the account the plaintiff is to be allowed a reasonable time to examine it, and make objections, if he has any such to make. The Court will then fix a day for hearing and determining such objections, and will make its decree accordingly.

Abbreviated procedure for rent suits —Dangers of a so-called summary procedure.

§ 174. We now come to Chapter XVIII, which contains the abbreviated procedure which we have been able to devise for rent suits. If this procedure appears to any persons less summary than they could wish, and if on this account objections are advanced against it, we can only in reply state our earnest conviction of the extreme danger of summary methods of justice. In order that justice may be done, truth must be elucidated; and the elucidation of truth, especially in this country, and for reasons which we need not here dwell upon in detail, requires time and patience. Any attempt to abridge judicial inquiry by arbitrary and abnormal presumtions in favour of either party, which by precluding the production of evidence may enable Judges to arrive at rapid conclusions, is, to our minds, retrogressive and unsafe. The history of the judicial administration of this country for the last half century is a continuous record of the abandonment of a system of procedure under which rights were hastily and perfunctorily adjudicated upon, the person defeated and dissatisfied being left to a "regular suit" to right himself, if wronged by an irregular proceeding which too often saddled him with the burden of proof that should have been laid on the shoulders of his adversary, and thus unfairly diminished his chance of ultimate success. We entirely agree in the wisdom which has abolished this system, we will not say, of administering justice but of choking of litigation, and we cannot recommended the adoption of any summary procedure for rent suits which would involve even a partial renewal of it.

Classes of suits to which the new procedure is made applicable.

§ 175. At the same time there are, we think, certain classes of rent suits, to the decision of which full justice can be done by a system of procedure shorter than the elaborate code now in force for ordinary civil suits, and such a system we have endeavoured to devise. The classes of suits to which we think this procedure can be applied with advantage are—

(1) suits for the recovery of arrears of rent;
(2) suits for ejectment;
(3) suits to recover possession of land;
(4) suits for damages on account of the illegal exaction of rent or cesses, or on account of the refusal of receipts;
(5) suits to compel the registration of successions to, or transfers of, tenures, under-tenures or occupancy holdings.

§ 176. The points of difference between *The Code of Civil Procednre* and the procedure proposed for the above classes of rent-suits, or in other words, the particulars in which the former procedure has been abbreviated, are as follow:—

Certain portions of The Code of Civil Procedure not extended.

First.—The following portions of *The Code of Civil Procedure* do not extend to rent suits at all, *viz.*, the sections relating to discovery, inspection, interrogatories and affidavits; sections 380-382 as to security for costs; sections 401-415 as to suits by paupers; sections 430-434 as to suits by aliens and by and against foreign and Native rulers; sections 470-476 as to interpleader; sections 503-505 as to receivers; sections 506-526 as to arbitration; sections 527-531 as to proceedings on the agreement of parties; sections 532-538 as to negotiable instruments; and section 529 as to public charities.

Summons to be for final disposal.

Secondly.—The summons is to be in all cases for the final disposal of the suit, which is ordinarily to be disposed of at the first hearing (section 173). We have laid down (section 188) precise rules as to the cases in which an adjournment may be allowed. To deny an adjournment would be in some cases tantamount to a denial of justice, but such cases are exceptional; and, if the subordinate courts will do their duty and District Judges see that they do it, we are satisfied that over 90 per cent. of rent suits can be properly disposed of at the first hearing.

No written pleadings.

Thirdly.—No written pleadings are required, save that the defendant may, if he desires, file a written statement of his defence (section 184).

Early and effectual ascertainment of facts and documents disputed.

Fourthly.—We have provided (section 190) that the court shall upon the day of hearing ascertain from each party whether he admits or denies the allegations of fact and the documents of the opposite party, and shall record such admissions or denials. We believe that this course will in very many cases considerably reduce the quantity of evidence that has to be taken, and in some cases do away with the necessity of taking evidence at all. It is too much the habit with supordinate judicial officers to leave the case in the hands of the parties in its earlier stages, rousing their own attention fully only when they come to write their judgment. Facts and documents, which would be readily admitted at the first appearence before the court, thus come to be strenuously denied, when the parties understand their bearing, are excited by the contest, advised by unscrupulous mukhtars and eager for victory regardless of the means by which it is obtained. The proceedings are thus prolonged and the time of the court wasted in taking evidence which ought to have been unnecessary.

Abbreviation of the record of the evidence.

Fifthly.—We have provided (section 192) for making a memorandum of the evidence sufficient to give the gist and substance of what is said, but requiring less time to record than if the whole of what each witness says were taken down at full length, as must be done under the provisions of *The Code of Civil Procedure* in all appealable cases. Any particular question and answer may, however, be taken down by the Judge if he thinks fit (section 193).

Avoidance of complicated questions of title.

Sixthly.—We have enacted (section 169) that the court shall not add as a party a person setting up a title adverse to the plaintiff or defendant in respect of the subject-matter of the suit; but any question of title, disputed between any such person and a party to the suit, may be decided in such suit as between the parties thereto, if the decision of such question is necessary to the proper determination of the suit. There is no greater source of delay in the decision of rent suits than the raising of complicated questions of title and making the decision of the court thereupon final and conclusive. Thus, in a suit brought to recover a few rupees of rent, the title to property worth a thousand rupees may be litigated, to the great detriment of the stamp revenue. It sometimes indeed happens that the decision of such a question is necessary in order to the decision of the rent suit. Where this is the case it may be tried and decided, but the decision will not be a bar to the formal trial of the same question under the provisions of *The Code of Civil Procedure* (section 223).

Limitation of appeal.

Seventhly.—We propose to take away appeals in suits brought for arrears of rent in which the amount claimed does not exceed *ten* rupees, and in which no question of right to enhance or vary the rent of a tenant has been determined.

Safeguards under which it is proposed to take away the right of appeal in petty cases.

§ 177. With respect to the last point, we are of opinion that the right of appeal in petty cases for the recovery of arrears of rent may well be taken away. Well aware as we are of the ideas of the people on the subject of appeal and the general dislike to the final jurisdiction on the Courts of Small Causes, we have provided two safe-guards for the class of cases in which we propose to take away the right of appeal: *First*, this final jurisdiction is to be exercised only by selected officers specially empowered by the Lieutenant-Governor; *secondly*, the District Judge is invested with a power of supervision which he can exercise, when satisfied that a failure of justice has been caused by a substantial defect or irregularity in the proceedings or in the decision.

Sections of *The Code of Civil Procedure*

§ 178. The Code of Civil Procedure, as amended by Act XII of 1879, contains 663 sections. Of these 393 have been extended to rent suits. The especially extended to rent suits.

sections extended are the following: 13, 19, 25, 27, 32, 36 to 41 inclusive, 45, 49, 52 to 57 inclusive, 59, 60, 62, 63, 66, 67, 69, 72, 73, 74, 77 to 88 inclusive, 91 to 103 inclusive, 105 to 109 inclusive, 111, 137 to 144 inclusive, 157 to 169 inclusive, 171 to 178 inclusive, 186, 188, 191, 193, 199 to 203 inclusive, 205, 206, 210, 216, 219 to 228 inclusive, 230 to 234 inclusive, 236 to 254 inclusive, 257, 257*a*, 258, 266 to 304 inclusive, 306 to 319 inclusive, 326 to 379 inclusive, 383 to 395 inclusive, 397 to 400 inclusive, 416 to 429 inclusive, 435 to 469 inclusive, 480, 482 to 491 inclusive, 540 to 591 inclusive, 623 to 630 inclusive, 640 to 645 inclusive, 648, 651 and 652. It may be observed that the use of many of these sections, though necessary at times, will be extremely rare in the trial of rent cases. In order to make the Procedure Chapter as simple and as easily workable as possible, two devices have been adopted in extending these sections of *The Code of Civil Procedure* to rent suits: *First*, the reference to the sections extended in connection with any point is inserted in the particular place in which the operation of these sections is required, *e. g.*, the sections of the Code relating to the service of summons on the defendant will be found in section 174 where provisions as to such service are required; *secondly*, the reference to the sections of the Code gives the marginal note of each or a sufficient description of its contents to enable the judicial officer who has to use it to turn to the right section at once without any risk of making a mistake.

District Judge may direct that any particular suit be tried under the provisions of the Code of Civil Procedure.

§ 179. There are a few other points connected with the proposed procedure, which may usefully be noticed. And first it may happen that in an important rent suit it would be very expedient that one of the parties should be able to make use of some of those portions of *The Code of Civil Procedure* which we have not extended, *e.g.*, inspection or discovery. We have therefore empowered the District Judge, upon application made, to direct that any particular suit shall be tried under the provisions of *The Code of Civil Procedure*, and upon such order being made the whole of such provisions shall be applicable to the trial of such suit.

Contents of plaint and decree.

§ 180. We have provided (section 167) that the plaint shall, amongst other particulars, in suits concerned with tenures, under-tenures, holdings or land, set forth the extent, situation, designation and boundaries of the same, or, where the plaintiff is unable to give the boundaries, in lieu thereof a description sufficient for identification. We have required the same particulars to be inserted in the decree, section 195, clause (*c*). According to section 45 of *The Code of Civil Procedure* a plaintiff may join in the same suit several causes of action against the same defendant or the same defendants jointly. Claims for arrears of rent of two or more tenures, under-tenures or occupancy holdings may therefore be joined in the same suit; but as each is liable and must be brought to sale for its own arrears only, we have required the decree in any such case to show separately the arrears decreed in respect of each tenure, under-tenure, and occupancy holding, section 195, clause (*d*).

Arrest before judgment allowed in what cases and with what limitations.

§ 181. We have substantially adopted the provisions of Act X of 1859 as to the arrest of the defendant before judgment (sections 175 to 179); but we have not allowed such arrest in suits for arrears of the rent of a tenure, under-tenure or occupancy holding hypothecated for its own rent under the provisions of section 64. The defendant can be arrested only if resident within the district in which the court is held, and if the court is satisfied (*a*) that there are *primâ facie* grounds for believing the claim to be well-founded, and (*b*) that if a summons be issued in the first instance, such defendant will abscond. If an arrest be obtained on insufficient grounds, the defendant will be entitled to compensation.

Attachment before judgment allowed in what cases and with what limitations.

§ 182. We have extended to rent suits the provisions of *The Code of Civil Procedure* as to attachment before judgment. These provisions will in certain cases form a useful and legitimate substitute for distraint, enabling the plaintiff to attach the defendant's crops through the court. We have provided, however, that in suits for arrears of the rent of a tenure, under-tenure or occupancy holding hypothecated for its own rent, there shall be no attachment before judgment, unless the plaintiff can satisfy the court that such arrears, together with interest and costs, are not likely to be satisfied by the sale-proceeds of such tenure, under-tenure or occupancy holdings (section 180). We have enacted that standing crops and other ungathered products which have been so attached, may, notwithstanding such attachment, be reaped and gathered by the defendant, and stowed in such granaries or other places as are commonly used by him for the purpose; and, if the defendant neglects to do so, the plaintiff may cause such crops or products to be reaped or gathered and may store them in such granaries or places, or in some other convenient place in the neighbourhood. We have also provided for an *ad interim* sale of crops or products which would deteriorate if kept (section 181.)

Ryots' implements of agriculture, plough, oxen, and houses may not be taken in execution.

§ 183. The result of extending section 266 of *The Code of Civil Procedure* to rent suits is that the following movables cannot be taken in execution :—(*a*) the necessary wearing apparel of the judgment-debtor, his wife and children; (*b*) implements of husbandry and such cattle as may, in the opinion of the court, be necessary to enable the judgment-debtor to earn his livelihood as an agriculturists; (*c*) the materials of houses and other buildings belonging to and occupied by agriculturists. It may be observed that these are not exempted from attachment in execution under the provisions of Act X of 1859, so that in those districts in which this Act is in force judgment-debtors under decrees for rent are placed at a considerable disadvantage in this respect.

Hardship of avoiding sub-leases and incumbrances upon the sale of a tenure for arrears of rent.

§ 184. The principle borrowed from the revenue sale laws of making sub-leases and incumbrances voidable upon the sale of a tenure for arrears of rent sometimes works great hardship to innocent persons. It appears to a majority of us very desirable to prevent this hardship if possible; and we have devised certain means which we hope will successfully accomplish this object. We have provided (section 205) that when a tanure or under-tenure is notified for sale, the amount of the decree and costs may be paid into court by any one who has an interest which would be endamaged by the sale of such tenure or under-tenure free of incumbrances. The amount so paid may be recovered as money lent from the person in consequence of whose default to pay rent the tenure or under-tenure was notified for sale.

Provisions of the Bill for preventing this hardship.

Payment into court of the amount of the decree by person likely to be endamaged by sale.

Object of avoiding incumbrances upon a sale to secure the landlord's rent.

§ 185. The object of making sub-leases and incumbrances voidable upon the sale of a tenure for arrears of rent is that the superior landlord's security for his rent may not be impaired. If the sub-leases and incumbrances of a tenure have not absorbed so much of the tenure-holder's profits as to render the interest left him insufficient to meet the rent which he pays to the proprietor of whom he holds his tenure, if the tenure, subject to these sub-leases and incumbrances, will sell for a sum sufficient to satisfy any decree that can be passed for arrears of the rent payable by the tenure-holder, it cannot be said that the proprietor-landlord's security for his rent has been impaired so far as to bring the case within the above object. The right of sub-letting and creating incumbrances belongs to every tenure-holder—such is the common law of the country. So long as the landlord is certain of the rent to which he is entitled, he cannot justly complain of the exercise of this right or claim to interfere with it. When, however, the exercise of the right extends so far as to endanger the landlord's rent, to impair the security for such rent afforded by the sale of the tenure by public auction, the case is altered, and the landlord may reasonably demand that these sub-leases and incumbrances be avoided, which have rendered the remaining interest of the tenure-holder an insufficient security for the rent payable by him.

This object not defeated if claim for rent satisfied by sale of tenure subject to incumbrances.

Bill provides that tenure shall first be put up to auction subject to incumbrances, and if bidding does not reach an amount sufficient to satisfy decree, a sale may then be had free of incumbrances.

§ 186. In this view of the matter we have enacted (sections 203, 206) that a tenure, under-tenure or occupancy holding about to be sold in execution of a decree for arrears of its own rent, shall first be put up to auction, subject to certain incumbrances, and if the sum bid is sufficient to liquidate the amount of the decree and costs, shall be sold subject to such incumbrances. If the highest amount bid is not sufficient to liquidate the decree, the decree-holder, that is, the landlord, may then claim to have the tenure, &c., sold free of incumbrances. Such sale is not to be had immediately, but upon a subsequent sale day not less than fifteen or more than thirty days afterwards; and a notification of such tenure being about to be offered for sale free of incumbrances must be posted upon some conspicuous place upon the land of the tenure. The effect of these provisions will be that persons who hold sub-leases and incumbrances will not be endamaged if the bidding on the first sale day reaches an amount sufficient to satisfy the decree, and the tenure is in consequence sold subject to incumbrances. If, on the other hand, the bidding on the first sale day does not reach an amount sufficient to satisfy the decree, such persons will have time to protect themselves from injury by paying in the amount of the decree (which they can subsequently recover from the defaulter) and so preventing such a sale of the tenure as will avoid incumbrances.

Protection afforded only to registered incumbrances, of which superior landlord had notice.

§ 187. It has appeared to us that the superior landlord ought to have notice of the creation of the incumbrances to which the above protection is afforded, and that this protection ought not to be extended to all incumbrances indiscriminately. We have accomplished this by defining the term "incumbrances" to mean and include every incumbrance, lien, sub-lease, or subordinate interest which the defaulting holder of the tenure, under-tenure or occupancy holding was by law competent to create in derogation of his own interest, and which was created by an instrument in writing duly registered, a copy of such instrument being served upon the person to whom the rent of the tenure, under-tenure or occupancy holding is payable. This provision will, we trust, prevent fraud, if sought to be accomplished by setting up sham incumbrances after the sale. It will also enable an intending purchaser to ascertain the real value of property about to be sold, and he will probably bid more than if he was in a state of uncertainty on this point. We have provided for incumbrances created before the commencement of the Act by instruments in writing duly registered under the law applicable to them, by allowing a copy of any such instrument to be served within six months after the commencement of the Act. Mr. O'Kinealy would extend the same privilege to *unregistered* incumbrances created before the Act, which were not required to be registered by any law in force at the time of their execution; but a majority of us are apprehensive lest this might induce some persons to set up incumbrances fabricated for the purpose.

Purchaser entitled to avoid all except registered incumbrances, unless superior landlord give written power to create.

§ 188. With the exception of these registered incumbrances, of the creation of which the superior landlord has had notice and which are protected in the case of a sale of the tenure subject to incumbrances, a purchaser will be entitled to avoid and annul all incumbrances imposed upon the tenure by any holder thereof, his representatives or assignees, unless in the case of incumbrances allowed by law, the right of creating the same was expressly granted by the written engagements under which the tenant was originally let into possession, or by the subsequent written authority of the person who let him into possession, or of the representatives or assignees of such person (section 210). *Khudkasht* ryots or resident and hereditary cultivators are not, however, liable to ejectment under this rule; nor can a purchaser cancel *bonâ fide* engagements made with them, unless he can show that a higher rent would have been fairly demandable at the time when such engagements were contracted; he may, however, proceed under the provisions of the Act to enhance the rents of all other ryots. We have provided in accordance with a decision of the Privy Council that the judgment-debtor himself or any person acting in fraudulent collusion with him for the purpose of disencumbering the tenure shall not be entitled to avoid incumbrances.

Khudkhasht ryots not liable to ejectment.

Court may set aside sale, when.

§ 189. The only other portion of the procedure to which we think it necessary to make special reference is that relating to setting aside sales. The court may set aside a sale if (*a*) material irregularity in publishing or conducting it, and (*b*) substantial injury caused thereby are proved, and not otherwise (section 212). When a sale is ordered to be set aside we have provided that the order shall direct the purchase-money to be refunded, with or without interest as the court may see fit: and that such order may be enforced as a decree for money against any person into whose hands the purchase-money or any portion of it may have passed, if such person has been served with notice of the application to have the sale set aside. This will prevent the hardship to a purchaser of having to bring a suit for the recovery of his money after he has lost the benefit of his purchase.

When sale set aside, order to be made for refund of the purchase-money.

The Bill not larger than the subject requires.

§ 190. The draft Bill which we have the honour to submit with this Report contains 225 sections, some of which are of considerable length, being sub-divided into two or more sub-sections. Having regard to the extent of the matter and the importance of the subject with which we have had to deal, we do not think that a Bill codifying the statute-law and the case-law concerned with landlords and tenants in these provinces can be compressed into much less space. We propose to repeal, in whole or in part, seven Regulations of the Bengal Code, four Acts of the Bengal Council, and four Acts of the Supreme Council. The seven Bengal Regulations contain 37 sections, some of which (specially in the Patni Regulation) are longer than any sections of the Bill; Act X of 1859 contains 168 sections; Act VI (B. C.) of 1862 contains 19 unrepealed sections; and Act VIII (B. C.) of 1865 contains 17 unrepealed sections. These four make a total of 241 sections, or more than the number of sections in the Bill. Again, Act VIII (B.C.) of 1869, which does not include procedure governed by *The Code of Civil Procedure*, contains 111 sections. The draft Bill includes—

	Sections.
Substantive Law	94
Enhancement Procedure	38
Summary Sale Procedure	14
Procedure for recovery of rents, &c.	79
Total ...	225

The North-Western Provinces Rent Act, 1873, contains 212 sections; and an Amending Bill, now before the Council, contains 29 sections = total 241. We have briefly adverted to these facts, because one of our colleagues expresses a hope that if the Bill be brought into Council it will be made "simple and practicable by cutting out half the sections and sub-sections and all the illustrations and explanations." He adds—"We know by experience that illustrations and explanations too often fail in their object, and, instead of elucidating, raise new and unforeseen difficulties and doubts as to the meaning of the text." The majority of us have not this knowledge, and, until we read this passage, were not aware of its existence. Our own experience has differently informed us. The illustrations and explanations in the Penal Code have, we believe, prevented many misconstructions of the text. Whatever difference of opinion there may be as to the utility of illustrations and explanations constructed from hypothetical cases, we concur with the modern masters of law-making, who set much value upon illustrations and explanations taken from cases which have actually occurred in practice.

Too much must not be expected from a measure of this kind.

§ 191. In concluding the task which has been entrusted to us, and the difficulty of which may be fairly postulated without the appearance of magnifying our duties, we indulge no undoubting confidence that, if the Bill which we have framed becomes law, it will ensure to the rural community of these provinces a paradise of agricultural peace and prosperity, undisturbed by litigation and untroubled by famine and all the accidents to which the husbandman's life is especially subject in this country. In many recommendations we all concur, who have had different experiences in different districts and in different departments of the public service. Where our views have differed we have felt ourselves justified in accepting, after discussion, a compromise which offers violence to the opinions of none. We very earnestly trust that good will come of our labours, but time and experience alone can show whether the hope will be realised. If it be beneficial that men's rights and duties be certain and definite, benefit ought to accrue from the collection in a single Act of all that concerns the rights and duties of landlords and tenants: and many provisions, such, for example, as those relating to merger and those concerned with coparceners, introduce exact rules where much doubt and consequent litigation have prevailed. In the interest of the cultivating class we have afforded protection from arbitrary and excessive enhancement of rents; we have defined the incidents of a right of occupancy and have made it a valuable property in the hands of a careful tenant; we have provided reasonable instalments of rent and secured the evidence of payment; we have restrained the harassment of honest tenants when their landlords are coparceners and cannot agree; we have given the evicted tenant the crop on the ground sown by himself, and have allowed him compensation for any improvements which he may have made; and, finally, we have endeavoured to raise the standard of comfort by allowing the ryot to build himself a comfortable habitation, and by giving him some share in the material progress of his country.

Provisions in the interest of Tenants.

Provisions in the interest of landlords.

§ 192. In the interest of the landlord we have provided rules for the registration of transfers of, and successions to, tenures, under-tenures and occupancy holdings; we have allowed the tenant to be ejected who disclaims his landlord's title, a valuable sanction in a country where the person who sets up a hostile title too often hopes to support it by suborning to his side the tenants of the person in possession; we have provided definite rules for the enhancement of the rents of tenure-holders and under-tenure-holders; and for the purpose of a reasonable enhancement of ryots' rents we have placed the executive agency of Government at the disposal of the zemindar, and have put him in as good a position as Government itself for the achievement of this object. Finally, we have provided the auction-purchser, who represents an important landholding interest in this country, with the means of realising the profit of capital invested in land. This ought to increase the value of landed property, and so benefit the landholding community. We believe that the advantages offered by the Bill to landlords are a full equivalent for anything proposed to be given to the ryots. If any think otherwise, we desire to remind them of how much more, in the opinions of some, the ryots are entitled to demand. As to the power of the Legislature to re-distribute property in land at any time, when such a re-distribution is required in the interests of the entire community, there can be no doubt. If such a re-distribution has for its immediate result the impairment of existing interests, compensation is usually given by civilized Legislatures; and we are of opinion that this rule should prevail, if anything contained in the draft Bill constituted a case to which the rule can be applicable. The majority of us desire, however, to say very emphatically that in our opinion nothing contained in the draft Bill constitutes such a case; and that all its provisions, so far as they propose to benefit the ryots, fall well within the power expressly reserved by the conditions of the Permanent Settlement—the power, that is, reserved to the Governor General of enacting, whenever he might deem it proper, such Regulations as he might think necessary for the protection and welfare of the dependent talukdars, ryots and other cultivators of the soil.[1]

* H. L. DAMPIER, *President.*
C. D. FIELD.
A. MACKENZIE.
J. O'KINEALY.
* MOHINI MOHUN ROY.
* PEARY MOHUN MOOKERJEE.
BROJENDRO KUMAR SEAL.

The 19*th June* 1880.

Remarks by MR. DAMPIER.

§ 1. CHAPTER XV of the Bill treats "Of proceedings to enhance the rent payable in money by ryots having a right of occupancy." The sections of this Chapter, as they stand drafted, provide for the landlord, who has a permanent transferable interest in the land, new facilities for enhancing the rent of his occupancy ryots by a procedure before the Collector. If he wishes to enhance on the first, second or third ground mentioned in section 22, they give him the option of proceeding either before the civil court as hitherto, or before the Collector according to the new procedure; if on the fourth ground (rise of prices), he can proceed before the Collector only.

§ 2. It is supposed that where the landlord wishes to proceed against a few ryots only, he will elect the civil court. I see no reason for assuming this. If the new procedure before the Collector becomes popular with landlords, they will probably elect it even for isolated cases. This would be going beyond the object of the present remedial measure which is to provide a special means for enabling the landlord to overcome the resistance which is offered by combinations of ryots, it having been found that when ryots so combine the landlord is practically powerless to enforce the rights which legally and admittedly belong to him.

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[1] Clause 1, Section 8, Reg. I of 1793.

* These Members of the Commission sign subject to their remarks which are appended.

§ 3. Again, if the new procedure becomes popular, and its adoption depends solely on the will of the landlord, I fear that simultaneous demands will be made on the Government for agency to carry it out, which will be very embarrassing and perhaps impossible to comply with promptly. I would therefore retain in the hands of Government the power of deciding whether cases for determining the amount of rent payable by each individual shall be dealt with by the revenue authorities or not.

If a landlord desires the prepartion of a table of rates of general application, he should of course apply to the Collector under sections 101, *et seq.*, but cases for determining the amount of rent payble by each ryot, whether in accordance with a table of rates so prepared or otherwise, I would have instituted in the first instance before the civil court, section 30 of the Civil Procedure Code being made use of, if necessary.

§ 4. Then, if the suits so instituted were numerous, and if the circumstances showed the existence of the special difficulty which the new procedure before the Collector is devised to meet, the suits should be transferred to the Collector. I would not leave the power of ordering such transfers in the hands of the Judge as is done by section 130 of the Bill, but in those of the Lieutenant-Governor. If on a representation from the Judge the Lieutenant-Governor were satisfied that good reason for the transfer existed, he would order the Collector to make an enhanced jamabandi, such as is contemplated in sections 107, *et seq.*, of the Bill.

§ 5. I would, however, make an exception of the cases contemplated in sections 112, *et seq.*, in which the landlord can show that, from causes beyond his own control, he is without information as to the existing details of the estate. The hardship of these cases and the difficulties with which a purchaser is beset on acquiring a property from a hostile proprietor, who withholds papers and information, are matters of notoriety. In these cases I would allow the landlord to apply at once to the Collector to make a "settlement jamabandi" as contemplated in section 112.

CALCUTTA, H. L. DAMPIER.
The 5*th June* 1880.

Remarks by BABOO PEARY MOHUN MOOKERJEE.

§ 1. As several of the provisions of the draft Bill were carried by a majority of votes, and as the above Report very properly gives only such facts and arguments as support those provisions, I wish to record my views on some, at least, of the cardinal points involved in the Bill.

Report, para. 45. § 2. The Bill has been avowedly framed on the principle that "the land of a country belongs to the people of the country: and while vested rights should be treated with all possible tenderness, no mode of appropriation and cultivation should be permanently allowed by the Ruler, which involves the wretchedness of the majority of the community." This is a theory, however, which assails the very foundation of private property. Whether they are the outcome of prescriptive enjoyment, or the result of acquisition by labour or money, rights of property should be scrupulously respected, and if the Ruler thinks it desirable that a vested right should be destroyed, let it be compensated for at its money-value, or some other equivalent paid to its possessor. It is as reasonable to trench upon a vested right of a landholder for the good of the ryots, as to ask a ryot to carefully cultivate land for the benefit of the entire Indian community.

Preamble and section 2 of Regulation XLIV of 1793. Sections 52 and 60 of Regulation VIII of 1793. § 3. The Government of 1793 declared the zemindars to be "proprietors of the soil" and "land-owners." With the exception of ryots who held under pottahs granted before the conclusion of the settlement, and *khudkasht* ryots, no other ryots were declared to have any right of occupancy in the land, or any right to hold land at fixed rates of rent. The landholders, on the contrary, were enjoined not to grant pottahs for a term exceeding ten years.

4, Wyman, page 247. § 4. In 1864 a majority of the Judges of the High Court gave it as their opinion that the right of occupancy created by section 6, Act X of 1859, was an invasion of the rights of the landholder. Mr. Justice Trevor declared it "a great infringement of the law previously existing," and Sir B. Peacock, Baboo Sumbhoo Nath Pundit, and others, suggested its abolition. The former learned Chief Justice based his recommendation on the grounds that "it interferes with the just rights of the zemindars, at least in the permanently settled districts, by vesting rights of occupancy in the ryots which had no previous existence;" and secondly, that "it tends to perpetuate small holdings, which must ultimately become injurious to the best interests of the country." Sir R. Garth is quite as strong in his opinion on the subject—"Now, however wise and politic this provision might have been, it seems to me impossible to deny that it operated as an invasion of the landholder's rights as conferred upon him by the Permanent Settlement."

4, Wyman, page

Note dated 8th January, 1880.

§ 5. The right has now been enjoyed by ryots for so long a time that the question of its abolition is at the present moment beyond the pale of discussion, but in the face of the above opinions expressed by responsible interpreters of the law, landholders have a right to ask that there should be no further encroachment on their rights. The Bill, however, provides for the extension of the right of occupancy (1) to those who have held or cultivated land under a mukarraridar or istemrardar; (2) to sub-ryots who have held or cultivated land otherwise than for a term, or year by year, under ryots having rights of occupancy; and, in a qualified form, (3) to ryots who have held land for three years or more, and less than twelve years.

Section 19, Explanation 3.

Explanation 3.

§ 6. Section 19 of the draft Bill, which takes away the right of occupancy from mukarraridars, istemrardars and all ryots whose holdings have been or will be declared, under the operation of the 20 years' presumption, protected from enhancement of rent, and transfers it to their under-ryots, will be productive of great confusion. It will place the mukarraridars at the mercy of their superior holders as regards lands which they cultivate themselves, and restrict their claim to rent from their under-ryots to a percentage of the produce much below what they get at present in several districts. The zemindars will also come in for their share of the loss. Section 20 (*c*) of the Bill recognises the right of the landlord to take possession of the land of any occupancy ryot who dies leaving no heirs, but neither on the death of the mukarraridar, nor of his under-ryot, would he be entitled to take possession of the land. In the first case the holding would escheat to Government, and in the second the land would lapse to the mukarraridar.

Section 23 (c).

§ 7. The new provisions regarding sub-lessees find no justification in any interpretation of the present law. It has been held by the courts that sub-lessees can acquire no right of occupancy, and it was observed by Mr. Justice L. S. Jackson in 22 W. R. 26 that "the law allows a sub-letting by a ryot who has a right of occupancy, though it does not permit the growth of a right of occupancy within a right of occupancy." The creation of a sub-occupancy right would cause a radical change in the position of a large class of ryots and lead to inextricable confusion in the determination of the respective rights of ryots and their sub-lessees. A ryot who has sub-let a portion of the lands which comprise his holding will be a sort of middleman as regards that portion, and an occupancy ryot as regards the remainder. There is nothing to prevent the sub-lessee when he finds that he has substantial rights in the land from sub-letting it in his turn to a second grade of sub-lessees who, although the actual cultivators of the soil and the men whom it is intended to benefit, will have no rights at all.

19, W. R. 95.
15, W. R. 495.

§ 8. It will be equally objectionable to give a recognized status and rights to ryots who have held for more than three and less than twelve years. It will be a new and unwarrantable infringement of the rights of the zemindar. It has been an established principle in this country that ryots, who have not acquired a right of occupancy by holding or cultivating land for the full period of twelve years, must pay whatever rent is demanded of them by the landlord or quit the land. But it is now proposed that whenever a ryot has held or cultivated land for only three years, he shall acquire *quasi*-proprietary rights in the land. He has a right to claim abatement of rent in the same way as an occupancy ryot. If the landlord claims more rent than what the ryot is willing to pay, he cannot get rid of the ryot, unless he previously pays him as compensation for disturbance a sum equal to the increased rent demanded, and compensation also for

Section 31.

Section 27 (b).

houses built and works done on the land, perhaps, without the landlord's knowledge or consent. Considering the price at which existing occupancy holdings are sold when they are sold by public or private sales, the compensation thus calculated will be greater than the full price of such holdings. These ryots will therefore virtually enjoy in many cases a more valuable right than existing occupancy ryots.

3, I. L. R., pages 896, 781.

Section 36.

Section 77.

Spl. W. R. 387.

Report, para. 111.

Statistical returns, page XL.

Section 42.

Report, para. 129.

§ 9. The legal incidents which have been declared to appertain to a right of occupancy also involve encroachments on the zemindar's rights. Contrary to well-recognized custom and the law as interpreted by the courts, a ryot has been declared entitled to erect a brick-built or other dwelling-house and out-offices, and to dig a tank on his land, without the permission of the zemindar, and also "to cut down and appropriate trees on his holding planted by himself, or by any ryot from whom such holding was derived by public or private sale, gift, device or inheritance." It has been held that "a zemindar has a right to the trees grown on his land by the tenant, who, though he may enjoy the benefit of the growing timber, has no power to cut the trees down." By cutting down the trees on any land, the letting value of the land is materially diminished, and the money that is required for removing the stumps and bringing the land to a culturable state is often considerable. If, therefore, after appropriating the trees the ryot relinquishes the land, the gain is entirely on his side, and the loss entirely on the side of the zemindar. The provisions with regard to the dwelling-houses of ryots are based on incorrect premises. It has been assumed that "owing to the uncertain state of the law many ryots entertain a *boná fide* belief that they may build as they please upon their land." The fact, however, is quite the reverse. A ryot who wants to build a dwelling-house invariably goes to the zemindar or his agent and rents a plot of *bastú* land for the purpose. He has to pay no fee unless he wishes to erect a brick-built house. He never meets with any difficulty in building his house, but he is well aware that he cannot, without the permission of the zemindar, build on his arable land and thus change it into *bastú*, which in several places yields less rent than arable land, and not always greater as has been assumed. Ryots always protect themselves by taking perpetual leases from their landlords whenever they wish to build a substantial house or to lay out a garden. The last administration report shows that in 1878-79 so many as 119,015 of such leases were registered in these provinces. The provision in question is, therefore, altogether unnecessary, and it will be a source of great loss to the zemindar, especially by reason of the rule which lays down that the rent of *bastú* land shall not be more than five per centum per annum of the market value of such land. Even supposing for a moment, as has been supposed, that an occupancy holding is worth four years' rent, a ryot would have simply to build a house or an out-office on a plot of arable land in order to get the rent of that plot ultimately reduced to one-fifth of what he was paying. The value of an occupancy holding, however, in many places rarely exceeds one year's rent. In such places, therefore, the rent of occupancy holdings converted into *bastú* would be, according to the proposed rule, proportionately smaller. These remarks apply with necessary modification to the provision which gives a ryot the power to excavate tanks without the permission of the zemindar.

Section 89.

§ 10. The Bill, it is true, gives the zemindar the power to eject a ryot who builds a factory or other structure not required for his dwelling, but even in such cases the ryot is declared entitled to compensation for the loss sustained by him, if from his ignorance of the changed use of the land the landlord fails to give notice to the ryot within a reasonable time. In dealing with these questions it would be well to bear in mind the remarks made by Mr. Justice Ainslie in 3 I. L. R. 784: "The statutory right of occupancy cannot be extended so as to make it include complete dominion over the land, subject only to the payment of a rent liable to be enhanced on certain conditions. The landlord is still entitled to insist that the land shall be used for the purposes for which it was granted, and although a liberal construction may be adopted, it cannot extend to a complete change in the mode of enjoyment."

§ 11. In the matter of enhancement of rent, the provision which has hitherto placed the greatest obstacle in the way of the zemindar has been left untouched. No one questions the justice of the rule which protects from enhancement of rent a holding which has been held at an uniform rate of rent from the time of the Permanent Settlement. But why exempt the ryot, the party who makes the affirmative allegation, and who is best able to prove it if it is true, from proving that the holding has been so held, and throw the burden of proving that it has not been so held on the zemindar, who has no means of discharging it? The number of landholders in these provinces who date their title from the time of the Permanent Settlement may be counted on our fingers. With these rare exceptions, all the landholders have derived their title by public or private sales. Experience has shown that in the immense majority of enhancement suits, perhaps more than 90 per cent., they were unable to rebut the presumption which the law raises in favour of the ryot on his proving uniform payment of rent for 20 years before suit. It cannot be that in all these cases the lands were held from 1793; such a supposition would be incompatible with the well-known fact that more than one-third of the land in these provinces was waste at the time of the Permanent Settlement, and that the rates of rent in every pergunnah varied from time to time. The landholders were, therefore, unable to get their just dues by reason of their inability to rebut a presumption which under any circumstances, and especially when they were auction-purchasers, they found it impossible to rebut. Soon after Act X of 1859 was passed this rule of law was found to work very hard upon the zemindars, but the success with which ryots have in a majority of cases resisted enhancement of rent on some technical plea or other during the last 20 years has placed in their hands evidence which will make the law of presumption operate with double hardship upon the landholder. Nothing, however, shows more clearly the injustice of this rule of presumption than the necessity which the Commission has found of protecting the interests of Government against its operation, by providing that in "estates not permanently settled such presumption shall not operate to prevent the enhancement of rent." If Government with all its prestige and influence, and all the means and appliances, which a well kept and organised system of accounts places at its disposal, has found by experience the necessity of a change in the law to protect its own interests, how much more imperative must be the necessity for an amendment of the law for protecting the interests of private landholders?

Section 1.

Sections 6 and 17, Exceptions.

§ 12. As regards the rates of enhancement of rent, the provisions of the existing law have been radically modified on the hypothesis "that the ruling power ought to determine the rents payable in these provinces by the ryots to the zemindars." My reading of the Regulations has, however, led me to the conclusion that the Legislature has always recognised it as an established principle in this country that it is not the ruling power, but custom, which determines the rents payable by ryots to their landlords. The Regulations of 1793 declared the zemindar entitled to get the customary or full pergunnah rate. Speaking of the protection from ejectment which ryots (evidently khudkasht) enjoy in many parts of Bengal, Lord Cornwallis says in his Minute dated the 3rd of February 1790—"Whoever cultivates the land, the zemindar can receive no more than the established rent which in most places is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit." Regulation V of 1812, and all the sale laws, recognise the existence of customary or pergunnah rates, and the framers of Act X of 1859 did not take away the rights which the landholders enjoy in this respect. Mr. Mackenzie rightly observes in paragraph 7 of his Note dated the 6th of January last—"I hold that it (right of occupancy) should only protect the ryot against arbitrary ejectment, and does not entitle him to hold at any privileged rate of rent." Sir Barnes Peacock remarked in his decision in *Ishur Ghose's* case—"To hold that the Legislature intended to confer rights of occupancy which did not previously exist at rents lower than such as could be reasonably obtained from new ryots, would be giving a construction to the Act which would render it an unjust interference with the vested rights of the landholders in the permanently settled districts, would considerably reduce the value of their property, and would defeat the expectations which at the time of the Permanent Settlement were held out to them that they would enjoy exclusively the fruits of their own good management and industry." In one of the leading decisions on the subject, the Privy Council observed that "a suit to

Report, para. 46.

2, Wyman 190.

enhance rent proceeds on the presumption that a zemindar holding under the Permanent Settlement has the right from time to time to raise the rents of all the rent-paying lands within the zemindaree, *according to the pergunnah or current rates,* unless he is precluded from the exercise of that right by a contract binding on him, or the lands in question can be brought within one of the exemptions recognised by Bengal Regulation VIII of 1793." The Government of 1793 reserved to itself, by section 8, Regulation I of 1793, the power to enact such Regulations as may be necessary "for the protection and welfare of dependent talukars, ryots and other cultivators of the soil," but the reservation referred, to use the words of the despatch of the Court of Directors, to "such Regulations as might be necessary to prevent the ryots from being improperly disturbed in their possession or loaded with unwarrantable exactions." It would be altogether incompatible with the letter and spirit of the Regulations which were passed simultaneously in the year 1793 to hold that that power extended to the determination of rents payable by ryots to their landlords.

Harington's Analysis, volume II, page 189.

§ 13. Following up the hypothesis which I have combated above, the Commission has suggested a provision to the effect that the enhanced rent of an occupancy ryot should not be more than one-fourth of the average annual value of the gross produce of the land. This dogmatic limitation of the zemindar's share of the produce is not only contradicted by the glaring fact that both in Bengal and Behar, when rent is payable in kind, the zemindar's share of the produce is rarely less than 50 per cent., but it is also indefensible on the grounds of justice and even of expediency. In those tracts of the country where rent is at present considerably more than 25 per cent. of the value of the produce, this rule will stop enhancement of rent altogether. The argument that the landlords in those places already enjoy more profits than what they are fairly entitled to is at best specious. The profits of landlords are not necessarily large in districts in which the ratio of rent to produce is high, nor are they necessarily small where the ratio is low. It appears from the valuations of estates as determined by road cess papers that in Beerbhoom and Hooghly, where the ratio of rent to produce is considerably more than one-fourth, the revenue is more than 45 per cent. of the valuation, while in Dacca and Chittagong, where the ratio of rent to produce is less than one-sixteenth, the revenue is less than 25 per cent. of the valuation of estates. The result of the operation of the proposed rule will be that in some cases, as I have already said, it will stop enhancement altogether; in others it will raise the rent in various proportions; in others, again, it will lead to a decennial doubling of the rents, and in all it will disturb the relative profits which the landlord and the ryot have been hitherto deriving from the land. The rule will not give the courts any help in the decision of suits for enhancement of rent. It is easy to see by the light of the official information placed before the public during the administration of Sir Richard Temple and since, that it will be no great help to the courts to know that the maximum limit of rent is 25 per cent. of the produce, when the prevailing ratio is perhaps 5 per cent. in one place and 40 per cent. in another.

Section 23 (c).

Report, para. 47.

Additional report, 1878-79, page 374.

Mr. Harrison's Tables.

§ 14. Mr. Trevor observed in the great rent case—"As, then, the terms 'fair and equitable' seem to me to have relation to the customary rate of the country, representing a share of the gross produce calculated in money, under whatever form of expression it be designated, and as the law directs that in case of disputes the rate of rent which a ryot with a right of occupancy has paid shall be considered fair and equitable until the contrary be shown, it is a fair presumption that the rent now paid represents the customary rent in the absence of any proof to the contrary. Under this presumption, then, when the value of the produce has increased otherwise than by the agency or the expense of the ryot or the zemindar, and simply in consequence of the rise of prices, what is the principle on which the rent should be adjusted? As the rent now paid represents the customary rent, it represents, on the view which I have adopted, that proportion of the gross produce calculated in money to which the zemindar was entitled; and as the increase in the produce has arisen from circumstances independent both of the zemindar and the ryot, the zemindar is entitled to a rise in his rent proportionate to the increased value of his share of the produce." Taking into consideration all the circumstances affecting the question, the above rule offers the most equitable solution of the difficulty. It gives the landlord and the ryot shares of the produce which local

3, W. R. Act X, page 41.

Report, para. 47.

Section 23(*b*).

custom has declared to be their proper shares, and it distributes the increased value of the produce between them in the ratio in which it was always distributed. The members of the Commission agree with Mr. Trevor in thinking "that existing rents should be taken as the basis of operation," and yet, instead of trying to reduce the rule of proportion in enhancement suits into a workable form, the majority have satisfied themselves with suggesting a maximum limit to enhanced rent. It appears to me that the practical operation of the equitable principles enunciated in the judgment in the great rent case will be rendered easy, and the difficulties which at present beset the investigation and decision of enhancement suits will be wholly removed if, by a careful enquiry, the ratio which rent bears to produce in different districts or other local areas be determined and declared once for all, and all suits and proceedings for the enhancement of rents be decided in future on the basis of such ratios. The justice of the rule has been indirectly admitted in the draft Bill, but it has been recommended in such a form that it will simply perpetuate the difficulties of enquiry, the difference of results in different suits, and the consequent confusion which have always attended the practical working of the rule in the form in which it has been laid down in the great rent case.

§ 15. If the rule of proportion be taken as the fundamental rule for enhancement of rent, as it has always been taken to be, there will be no necessity for the rule (1) that the enhanced rent shall not be more than double the previous rent, or for the rule (2) that after the rent of a holding has been once enhanced, there shall be no enhancement for a period of 10 years next ensuing, or for the rule (3) that if the increase of the productive powers of the land or of the price of produce has taken place otherwise than by the agency or at the expense of the landlord or the ryot, the landlord shall be entitled to only one-half of the benefit of such increase. Rules (1) and (2), although unnecessary, are comparatively unobjectionable; but by rule (3), which is as positive in its terms as rule (1), the benefit of the increase will be equitably divided in districts like Hooghly and Burdwan, but it will distribute the benefit between the landlord and the ryot in Dacca and Chittagong in a ratio which, as against the ryot, will be eight to ten times greater than the ratio in which it has been hitherto divided. The effect of all the various provisions regarding enhancement rent will, therefore, be that, instead of a simple rule of proportion to go by, the Munsif or the Collector will have before him for his guidance a number of rules which, without introducing an additional atom of equity or justice in the determination of the question, will complicate matters infinitely more than the existing rule which they are intended to supersede.

Section 23(b).

Section 10(b)

Section 23(e).

§ 16. It has been proposed to convert all holdings of ryots which singly comprise 100 bighas or more into tenures. This proposal, although it entails some loss on the landholders, would have been harmless enough if the maximum margin of profits which a tenure-holder may have for his share had not been raised to 30 per cent. of the balance, which remains after deducting from rents payable to him the expenses of collecting such rents. Regulation V of 1812, section 8, fixed the share of the tenure-holder's profits at 10 per cent. of the gross rents collected by him, and although that law was repealed in 1859, and by oversight no new provision enacted in its place, the courts have continued to hold such share to be fair and equitable. It is admitted that tenure-holders and other middlemen "are no very useful members of an agricultural community." Why then raise their share of the profits? Why do it at a great sacrifice of the interest of the zemindar?

Section 11.

Section 9.

Report para. 51.

Report, para.

§ 17. The clause regarding progressive enhancement, providing that a decree may direct that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhanced rent is reached, is also open to objection. On this point I wish only to repeat what I said in my Note dated the 20th April 1880: "The idea of progressive enhancement is new and altogether foreign to the subject. When waste land is to be cultivated, one can understand a ryot wishing to rent it at a progressive jumma in consideration of the time which must elapse before the land will yield a full crop; but why should a ryot be entitled to pay even for two or three years anything less than what the court holds to be the fair and equitable rate? It would be taking an altogether wrong view of the rights of the parties if we think that the burden of enhanced rent should be lightly and gradually thrown on the ryot. A con-

Section 23 (d).

sumer of food-grain has much better right to claim a progressive instead of a sudden rise of the price of grain. In the case of the ryot it must be assumed that there has been a steady rise of the value of produce, and that he has refused to pay amicably to the landholder the share of the increased value which he is entitled to get. Tenderness to the ryot, under such circumstances, will be wholly misplaced. It will simply give a premium to litigation, and stop for ever all amicable adjustment of rent."

Section 21. Section 36.

§ 18. When rent is payable in kind, the share of the produce which the landlord is entitled to receive has been limited to 50 per cent. In many places, however, both in Bengal and Behar, the landlord's share is nine-sixteenths of the produce, even when the ryot does not receive from him seed, labour, or other assistance. An attempt to reduce existing rates will be not only fraught with injustice, but it will be also productive of much confusion by the disturbance of existing rights. I also object to the ryot in Behar being invested with the power of having rent payable in kind commuted to an annual money-rent. Where rent is paid in kind there is no necessity for enhancement; both the parties get their customary share of the benefit whenever there is an increase in the value of produce. The proposed change will make litigation inevitable where the rights of the parties at present adjust themselves without any extraneous intervention.

Report, para. 4.

§ 19. The provisions for the distraint of crops are very widely resorted to by landholders for the recovery of their rents. They enable them to realize their rents at the proper time, simply by the threat of coercive measures without putting the legal machinery into action, while they save the ryot the loss of time, work and money attendant on suits for arrears of rent. The landlords have seldom the motive to abuse the power vested in them, and, as a matter of fact, the power *is* seldom abused. The heavy penalties provided for cases of abuse of the power are effectual deterrents against wanton or oppressive distraint. Whenever the power is improperly exercised, the law gives the ryot ample compensation for any losses sustained by him. The process of distraint is a mode of proceeding which has taken root in the minds of landlords, and it is regarded by them as the most effectual means for the easy and timely realization of their rents from a body of men who are known to be generally improvident, and who would be ultimately injured rather than benefitted by the abolition of the process. The reasons given for its abolition are based on incorrect and insufficient information, and they do not justify a change in the law, which will be a misfortune alike to zemindar and ryot.

Section 65.

§ 20. The necessity for investing the district courts with the power of appointing a manager for the management of an estate or tenure held by two or more coparceners, when even a single ryot, or the owner of an infinitesimal share, chooses to apply for such an appointment, has not been made out. The decision recently passed by a Full Bench of the High Court, recognizing the power of every coparcener to have his share of the rent apportioned by a suit in court, will remove all sources of annoyance to the ryots of joint estates and tenures, and of disputes among the coparceners themselves. The proposal for the appointment of managers by court is therefore uncalled for. A similar proposition started at the time of Sir George Campbell was looked upon with disfavour by the executive and judicial officers who were consulted about it, and it was abandoned after a thorough discussion of its merits and demerits. It is certainly not desirable that the mediæval passion for superseding the independent conduct of every man's affairs by officious legislation in matters relating to land should not be revived.

Section 56. Section 22. Section 25.

§ 21. There are some minor points on which also I am obliged to differ from the majority of my colleagues. (1) The present law allows interest at the rate of 12 per cent. on arrears of rent. The draft Bill takes away the landlord's right to collect rent by monthly kists, and yet it makes the rate of interest in some measure discretionary with the courts. (2) It has been no doubt held by the courts that a slight increase of area of a holding where the boundaries have not changed is no ground for enhancement of rent. The draft Bill, however, gives illustrations of the principle which, if followed, would in a large number of cases not legitimately coming within it deprive the landlord of his right of enhancement on the ground of excess lands. It is also evident that where the rent is fixed at so much per bigha, the above principle

Section 206.

does not apply, and there is no reason why there should be no enhancement even for a slight increase of area. On the other hand, a ryot can apply for abatement of rent on the allegation that his holding of ten bighas is found by measurement to be one cottah less than that quantity. (3) The change which the Bill seeks to introduce in the law relating to the sale of tenures for their own default is unnecessary, and I have no doubt that it will be a fruitful source of litigation.

Section 79. Explanation.

§ 22. The discussions that were invited on the proposal for making rights of occupancy transferable shewed that, while it involved a great injustice to the landholders, it was a matter of questionable expediency. The observations made on the subject by the learned Chief Justice, in his Note dated the 8th of January last, are so well founded on facts, and so well argued, that I shall content myself with giving extracts from it. After assuming that the creation of the right of occupancy could be defended on grounds of equity, he pertinently asks—"If the equity to the landlord consisted in his being permanently secured a good tenant, what becomes of the equity if you allow the tenant to transfer his interest? It is hardly fair to suggest that zemindars ought not to object to the transferability of ryots' tenures, on the ground that the measure would be merely unpleasant or injurious to themselves. It strikes me that this is just the ground upon which zemindars, or any other class of men, are perfectly justified in objecting to any public measure. I can hardly conceive a greater source of irritation than for a rival zemindar to buy up a number of ryots' holdings in the middle of his neighbour's estate, and to use his influence and position, so obtained, to create disaffection and disloyalty amongst his neighbour's ryots. It seems to me impossible to contend, with any show of reason, that it is no injustice to a landlord to deprive him of the right which he has by law of selecting his own tenants, and I confess that I cannot view such injustice in the light of a sentimental grievance. I think it equally true, on the other hand, that to give a poor population like the Bengal ryots the means of selling or mortgaging their tenures at pleasure is a very certain means of making them improvident and unthrifty. I should have thought that the most effectual way of protecting such people, and preventing them from wasting their substance, would be to secure them a permanent interest in their property by prohibiting the alienation of it in any shape or way." If rights of occupancy be made transferable, the provision for the ejectment of occupancy ryots for arrears of rent must be, as it has been in the draft Bill, done away with. Should, therefore, Government determine to give a saleable character to occupancy holdings, the zemindars have a right to expect that they should be adequately compensated for these new infringements of their rights, and that at least effective facilities will be given them for recovery and enhancement of rent.

Sections 46, 54.

§ 23. What are the facilities and benefits which the draft Bill proposes to give the landholders in exchange for the new encroachments upon their rights? The provisions touching the registration of transfers of tenures, under-tenures, and holdings by succession, gift, sale, and otherwise, are perhaps the only sections in the Bill which they can look upon as an improvement on the present law, so far as regards a proper recognition of their rights in one particular. These provisions are, however, a necessary corollary to the new sections regarding the transferability of ryoti holdings. The new provisions for the settlement of rent by the Collector are of questionable benefit to the zemindar. They take away the constitutional rights of parties as to representation by Counsel and as to appeals, and place the determination of most valuable rights in the hands of the executive.

§ 24. Upon the whole, I think that the draft Bill in its present form will not be nearly half so acceptable to the general body of landholders as the written and unwritten laws which now govern their relations with their ryots. For one good measure or two which we propose to offer them, we propose to curtail and annihilate their rights in fifty different directions.

PEARY MOHUN MOOKERJEE.

The 14*th June* 1880.

Remarks by BABOO MOHINI MOHUN ROY.

§ 1. I do not approve of the draft Bill as a whole, and strongly disapprove of the many material changes which it proposes to make in the substantive law relating to rights in land. I always deprecated such changes. The relation of landlord and tenant, with reference to rights in land, is such that you cannot confer a valuable right upon one class without causing a corresponding diminution in the interest of the other. I was therefore of opinion that we ought not to make any substantial alterations in the respective rights of landlords and tenants as defined by Act X of 1859 and Act VIII (B.C.) of 1869; but that we might do a great deal for their common benefit, and diminish litigation by simplifying the procedure, by simplifying the relations of the two classes, and by removing the technical difficulties and formal obstacles which now exist in the way of the exercise of their just and undoubted rights. The majority of the official members, who likewise formed the majority of the Rent Commission, however, held views somewhat different, and seemed to think that the line drawn by the existing law [Act X of 1859 and Act VIII (B.C.) of 1869] between the conflicting rights of landlord and tenant was not sufficiently "scientific;" and that they (the majority of the Rent Commission) might, and should now, recast land-tenures and make a re-distribution of the property in land between the two classes.

§ 2. There was considerable discussion and difference of opinion upon one point, *viz.*, whether Act X of 1859 had altered the previously existing law to the advantage or disadvantage of the ryot. Upon this point I entertain a very clear and decided opinion, which is likewise supported by high authority. In the Minute of Sir Barnes Peacock, dated the 31st March 1864, he says:—"It appears to me that section 6 is objectionable and ought to be repealed, *first*, because it interferes with the just rights of the zemindars, at least in the permanently-settled districts, by vesting rights of occupancy in the ryots, which had no previous existence." Lord Canning, in his message conveying his assent to the Bill (Act X of 1859), said:—"It had long been desirable that the important questions connected with the relative rights of landlord and tenant dealt with by the Bill should be settled; that the Bill was a real and earnest endeavour to improve the position of the ryots of Bengal, and to open to them a prospect of freedom and independence which they had not hitherto enjoyed, by clearly defining their rights and by placing restrictions on the power of the zemindars such as ought long since to have been provided."

§ 3. Such high authorities seem to be fairly conclusive upon the point. But it also seems to me that we ought not to go behind Act X of 1859. That Act has been law now nearly twenty years; the people of Bengal have become familiar with its provisions, and made their arrangements and contracts upon the footing thereof. The disquiet and the disaffection consequent on the introduction of a new law have now subsided. It often takes a considerable time for a law to settle itself, and for the people to adapt themselves and to adjust their relations according to the law. The existing law relating to landlord and tenant may fairly be said to have arrived at this stage. We should now be very careful not to do anything which may have the effect of embroiling again the two classes and bringing on another cycle of disquiet and disturbance. The draft Bill, if passed into law without extensive alterations, is, I am afraid, extremely likely to produce this result.

§ 4. One objectionable feature of the draft Bill which requires special notice is that, striving at elaboration, its tendency has been to complicate the relations between landlord and tenant. Very little has been done in the way of simplification. I do not say that nothing has been done in this direction, but a great deal more might be done. As the draft Bill stands at present, the simplifications effected will bear no comparison to the complications introduced. In this respect our draft Bill has very poor claims to be considered an improvement upon Act X of 1859. One section of the old law has been swelled into ten, and illustrations and explanations added in the somewhat typical form of our modern efforts at legislation. We know by experience that illustrations and explanations too often fail in their object, and instead of elucidating raise new and unforeseen difficulties and doubts as to the meaning of the text. If our Bill be so fortunate as to be introduced into

Council, I hope care will be taken to reduce it to shape, and to make it simple and practicable by cutting out half the sections and sub-sections and all the illustrations and explanations. Some of the most questionable "improvements" are in these sub-sections, illustrations, and explanations (*vide* explanation I of section 18, and clause (*b*) of section 77).

§ 5. It is not my intention to criticise all the changes which our draft Bill proposes to make in the present law, but I shall briefly refer to some of the most objectionable ones, such as I consider to have a highly mischievous tendency, or to be clear infringements of existing rights.

(*a*) *Chapter III, Section* 18.—Provisions for sub-letting by an occupancy ryot and for converting an occupancy ryot into a tenure-holder. These provisions are clear infringements of the rights of landlords, and to some extent also of the rights of occupancy ryots as against their sub-ryots, and are calculated to give rise to much litigation.

(*b*) *Chapter IV, Sections* 26 *to* 31.—Investing three-year ryots with occupancy rights in a modified form. This is a flagrant change and requires no comment.

(*c*) *Chapter VI, Sections* 37, 38, 39, *and* 40.—I do not object to section 36, which enables a ryot to build a dwelling-house upon the land of his holding. But sections 37, 38, 39, and 40 have a dangerous tendency, and will be productive of bitter and harassing litigation. I suppose if a ryot applies land to any purpose inconsistent with that for which it was let to him, he is a wrong-doer. There is no reason in justice why so much tenderness should be shewn to him, and so many artificial difficulties thrown in the way of the landlord seeking to remedy the wrong. Section 40 appears to have been framed with reference to some old rulings of our Court, and is vicious in principle. It has been held in later cases that mere delay in suing does not constitute acquiescence and deprive a plaintiff of his right to relief—(*vide* Indian Law Reports I, Allahabad, page 32, and X, Bengal Law Reports, page 324).

(*d*) *Chapter VI, Sections* 41 *and* 42.—This is a very dangerous "improvement" and one of a very wide range and comprehensive character. I do not object to extending the principle of occupancy right to homestead lands in villages used for dwelling purposes by artizans, shop-keepers, and other non-agricultural people. But I object to the maximum rent being fixed at five per cent. of the market value, which I consider to be too low. Nine per cent. would, in my opinion, be fair. As to extending the principle of occupancy right to village lands not used for dwelling purposes and to lands situated in towns (whether used for building or any other purpose), it seems to be entirely out of the question, unless wholesale confiscation of private property is intended.

(*e*) *Chapter X, Sections* 65 *to* 67.—The provisions for the appointment of a manager are unnecesary, and will answer no useful purpose. Persons out of possession having claims to a share in property will largely resort to these provisions for the purpose of obtaining a recognition in some shape of their claims or of harassing their adversaries. In this respect I think the existing law is quite sufficient for all practical purposes, and does not require any alteration.

(*f*) *Chapter XI, Section* 77, *Clause* (*b*).—Ryots entitled to cut trees. In the case of *Ruttunjee Eduljee Shet* (X, W. R., page 13, P. C.), the Judicial Committee of the Privy Council say—"The trees upon the land were part of the land, and the right to cut down and sell those trees were incident to the proprietorship of the land. The appellant (who was lessee under Government) must ground his title to those trees and the right to cut them down either upon this that it is a necessary incident of the lease, or, secondly, under some positive law, or, thirdly, under some custom to be incorporated in the lease, or fourthly, under the express terms of the lease."

(*g*) *Chapter XVIII, Sections* 206 *and* 207.—I as a member of the profession ought to be grateful for this "improvement," which certainly promises a splendid crop of litigation. But it will place a serious obstacle in the way of obtaining execution of rent-decrees in cases of saleable tenures. It was remarked by Sir Barnes Peacock in one of his judgments that "in this country a plaintiff's troubles begin as soon as he obtains a decree. Indeed, our laws have provided many ingenious devices for obstructing and delaying execution. But delay in the execution of a rent-decree is far more injurious and involves greater risk of loss than in the case of other decrees. The accumulation in other decrees is simply of interest, but in the case of a rent-decree it is of interest and subsequent rents.

It is also worthy of consideration that the subordinate tenants have obtained their tenures with full knowledge of their risk and presumably paid value upon this footing. They cannot justly ask that the law should be changed for their benefit and to the prejudice of the superior landlord, or, in other words, that they should be secured against all risk, while additional obstructions and risk of loss should be thrown upon the superior landlord. The subordinate tenants have the right to salve the parent tenure and thereby protect their own interests by paying in the amount of the decree. I also think that in some cases, where incumbrances and intermediate tenures have multiplied to an abnormal extent, their extinction is urgently required, and that in such cases a sale of the superior tenure for arrears of rent proves the salvation of the property. It is stated in the Report (paragraph 15) "that in Backergunge there are as many as thirteen persons having successive interests in the land inferior to that of the proprietor or zemindar." Above all, the complications and consequent litigation which this change will produce will far outweigh any little good which it may do to certain intermediate tenants.

§ 6. In conclusion, I wish to say a few words with reference to one important point noticed in paragraph 7 of the Report. It seems to me that the suggestion that "all contracts of tenancy should be required by law to be in writing" has been discarded by the majority of the Commission without any good reason. The facts cited and arguments used in the Report go only to shew that no retrospective effect should be given to such a law. I have searched in vain for a single fact or argument against its adoption in respect of new tenancies.

It is admitted that "this suggestion has been repeatedly made and, on more than one occasion, supported by high authority. The advisability of having such contracts in writing impressed itself at an early period upon the minds of the people of England. The first section of the Statute of Frauds enacted that all leases made by parol, and not put in writing, should have the force and effect of leases-at-will only. The experience of the registration offices indicates that writing is commonly used in the creation of new tenancies."

But it is said that "the majority of the tenancies in Bengal and Behar depend upon custom rather than contract." This is a doubtful proposition of fact and somewhat vaguely put. But the inference drawn therefrom against the adoption of written contracts in respect of new tenancies is clearly erroneous. The law with reference to customs is, as laid down by the Privy Council in the case of Nil Kristo Deb Barmana (12 W. R., page 21, P. C.), "where a custom is proved to exist, it supersedes the general law, which, however, still regulates all beyond the custom." Especial provision has been made in our draft Bill for saving customs and customary rights (*vide* paragraph 12 of the Report). It is stated therein—"We believe that there are many local customs in this as well as in every other country well understood by the people, recognized by the landlords, and susceptible of proof in the Courts of Justice; and we think it very desirable to make it clearly understood that the Bill is not intended to interfere with any of these, unless they have been expressly rescinded by, or are clearly inconsistent with, its provisions."

The area of the operation of local customs must be extremely small, and it is difficult to see how such customs can apply to new tenancies. But the enactment of a law compelling written contracts in cases of new tenancies created will not and cannot interfere with local customs where such are proved to exist.

The advantages of enacting a law similar to the first section of the Statute of Frauds are manifest. It will simplify the relations of landlord and tenant, render such relations more certain and less open to doubt and controversy, and greatly diminish litigation. It will scarcely be making any change in the present law. It has been held in numerous cases in our Courts that, where an ejected tenant sued to recover possession against his landlord, "it was for him to prove that he was entitled to obtain possession either by virtue of a lease granted to him by the zemindar, or by a virtue of a right of occupancy acquired under section 6, Act X." The above quotation is from the judgment of Justice Dwarka Nath Mitter in the case of Ram Mohun Das (14 W. R., page 41).

§ 7. Let the right of occupancy remain; let all existing tenancies and local customs be saved; but let not new kinds of tenancy be created by statute; and let it be declared that henceforth all contracts of tenancy "not put in writing shall have the force and effect of leases-at-will only". This is simple and seems to be what will meet the present requirements of the country.

MOHINI MOHUN ROY.

The 16*th June* 1880.

Remarks by MR. MACKENZIE.

§ 1. I HAVE signed the Report and accepted the Bill as a whole, though there are some few points in both of which I do not altogether approve.

§ 2. Much credit is due to Mr. Field for the manner in which, under considerable difficulties, owing to the absence latterly from Calcutta of several members of the Commission, he has succeeded in fairly embodying in the Report the views of most of us, and in expressing in his draft sections the general conclusions arrived at while we were together. The only member who has thought fit to cavil at the *style* of the work is apparently Baboo Mohini Mohun Roy, who, to our great loss, only found leisure to attend less than half of the forty-four meetings of the Commission, was seldom able, when he did come, to remain till the close of any meeting, was absent when many of the more important matters were discussed, and gave less aid in shaping the measure which he now criticises than any other member. Personally I regret this, because what few suggestions this gentleman favoured us with were practical and marked by much acuteness, and, if he had been actively suggestive instead of unduly reticent, we might have derived much benefit from his assistance.

§ 3. There can be no doubt that in its *main* features the Bill expresses the common conclusions of all the members, with the remarked exception of the two gentlemen who represented specially the zemindary interest—Baboo Peary Mohun Mookerjea and Baboo Mohini Mohun Roy. I am afraid that the only measure likely to command their unqualified approval would be a Bill giving unlimited facilities of collection and enhancement of rent to the zemindars, and curtailing, as far as possible, the few legally recognised privileges of under-tenants and ryots. Baboo Peary Mohun Mookerjea especially has been consistently opposed to making any concessions to either tenure-holders or cultivators, and has even repudiated the more liberal views of the British Indian Association, as officially expressed, on such matters as the maximum rate of occupancy rents, and the transferability of the occupancy tenure. Both these gentlemen in their minutes of dissent protest vigorously against "going behind Act X of 1859" when any benefit to tenants is likely to arise therefrom, but they both seem quite ready to set Act X aside when any consequent gain would accrue to the class which they represent. I place in contrast, as some evidence of this, the following passages:—

Extract from remarks on the Bill by Baboo Mohini Mohun Roy.

"I do not approve of the draft Bill as a whole, and strongly disapprove of the many material changes which it proposes to make in the substantive law relating to rights in land. I always deprecated such changes......I was therefore of opinion that we ought not to make any substantial alterations in the respective rights of landlords and tenants as defined by Act X of 1859 and Act VIII (B.C.) of 1869......It seems to me we ought not to go behind Act X."

Extract from proceedings of the Eighteenth Meeting of the Commission.

"Baboo Mohini Mohun Roy *proposed to* alter the presumption that when a ryot's rent has not been changed for 20 years, the land has been held at that rent from the time of the Permanent Settlement.

Ayes.	*Nos.*
Baboo Mohini Mohun Roy. Baboo Peary Mohun Mookerjea.	*All the other six members of the Commission.*

§ 4. Now, though I think it right to notice the spirit in which these dissentient members approached the subject, I do not for a moment maintain that this fact invalidates their criticisms or disparages their arguments. They support, as they have every right to do, one side of very vexed question. It is natural enough that they should as landholders themselves enunciate the highest theories of the character and extent of zemindary rights in Bengal. They make of course, and quite legitimately, the very most of the terms "proprietors of the soil" and "landowners" used in the legislation of 1793. They hold on tenaciously, and rightly, to the sheet-anchor of their school—Sir Barnes Peacock;—and they are, fortunately for them, able also to refer to the present Chief Justice as having (though so far on the unargued case) accepted the views of the zemindary propaganda. There is evidently much to be said, therefore, for their view of the facts, and it is not at all likely to be left unsaid. The landed and wealthy classes of Bengal have powerful organs in the Press, and powerful friends both here and at home. There are many of them very amiable persons, of great intelligence and great benevolence. Officials are glad to do them favours, and find it pleasant to be on friendly relations with them. Every prejudice arising out of Western notions of property and the relations of landlord and tenant in Great Britain is entirely on their side. It is only at the cost of much dry study of old records, old laws, and old books, and from a close and critical examination of certain apparently anomalous survivals in the rural economy of the province, that one comes to learn that there is, even in permanently-settled Bengal, quite another side to the land question which is not represented in the zemindar's statement of the case, which has been affected less than is supposed by modern legislation, which concerns the interests of vast masses of unfriended peasants, and which the occurrences of recent years make it necessary, once for all, to bring prominently under the consideration of Government and the Legislature.

§ 5. I cannot here enter into a detailed statement of the grounds upon which I, for one, have been led to hold that there is, both in law and fact, a living tenant-right in Bengal—a right, that is to say, belonging to the cultivator, limiting and restricting the proprietary rights of the zemindar, and which, though seriously damaged by ill-advised legislation, has not yet been altogether destroyed. Some of these grounds will be found on record in the proceedings of the Commission, and especially in Mr. O'Kinealy's historical note. The Commission has by a majority practically endorsed that general view, though it has not seen its way to placing the matter on the simple basis suggested by me. I wish here, therefore, very briefly to repeat what my contention is, and to show that it is not after all more than the zemindars themselves would be wise to grant.

§ 6. I may remark at the outset that I have myself no special reverence for Act X of 1859. I have read all the correspondence leading up to it, and all the discussions attending its enactment, and I suppose that there never was a measure of equal moment so inadequately considered and debated. The fact is that it was devised mainly to meet acknowledged evils arising out of the summary procedure then in force for the recovery of rents, and attaching to the system of distraint; and what provisions of substantive law were incorporated in it were brought in almost haphazard, without any reference to the mass of information bearing upon them, which lay in the record-rooms of Government, and the numerous discussions and proposals of former years, which had been allowed to slide into oblivion. I have the original file before me as I write, and it is marvellous to see how little was known of byegone discussions as to ryots' rights, byegone orders of the Court of Directors to protect these, and byegone representations of Collectors as to the "unauthorized encroachments" of the zemindars. I attach to this almost the only paper I can find among the reports on the Bill that shows any real acquaintance with the constitutional history of rural Bengal—a minute by Mr. A. Sconce, though even Mr. Sconce was not fully aware of the actual strength of the resident ryot's position. I also attach a minute by the Lieutenant-Governor, Mr. F. M. Halliday, recorded by way of instruction to Mr. Currie, the Member in charge of the Bill. It is curious to note how very near the occupancy ryots came to getting permanency of rent-rates in 1859, and how little apparently it was intended to stimulate a general enhancement of such ryot's rents. It is equally curious to learn from the papers that the Select Committee on Act X were mainly influenced in adopting the twelve years' rule of occupancy by an erroneous construction of a revenue circular of the North-West Board, which had no application whatever to Bengal. It was due, indeed, mainly to this misconception that the Act, as passed, failed to declare what the Bill, as introduced, laid down as acknowledged law—that *every* resident ryot had a right of occupancy, and that *three years'* cultivation of land conferred rights of occupancy on resident ryots even in lands not previously in their occupation, and for which they had no written lease.

§ 7. Such being the inner history of the making of Act X, it is to my mind absurd to refer to it as a sort of legal revelation, which it is heresy to supplement and sacrilege to alter. If it can be shewn that the Act has failed to settle satisfactorily the questions with which it deals, let it, I say, be amended like any other piece of imperfect legislation. That it is imperfect is proved by the vast number of conflicting decisions massed around it by the courts. It is quite a misrepresentation to say that it has anywhere 'settled' the respective rights of landlords and tenants. It has not certainly satisfied the zemindars. They have been calling loudly for its amendment in their own interests, and it is only when they are afraid of losing possessions which, under its provisions, they have managed to occupy legally for the first time, that they appeal to it as a final settlement of their relations with their tenants. They have told us repeatedly that they can neither collect their rents nor enhance their rents under the Act as it stands; and they are willing enough to see the Act set aside so long as the Government confines its attention to these particular points. By all means then let us amend the law on these points; but as we are thus disturbing necessarily the existing relations of landlord and tenant in the interests of the landlords, we ought surely at the same time to see if nothing else is needed to maintain or restore the equitable balance between the parties. The Commission was, I contend, bound to enquire if the legislation of 1859 has not in some way injured the ryots as well as restricted landlords' rights.

§ 8. For my part I have no doubt whatever that it was from the earliest times an axiom in Indian land law that every settled cultivator was entitled to be maintained in the quiet occupation of the land he tilled, so long as he paid the established quota of land-tax to the State, or (in Bengal) to the zemindar as under contract representing the State; and that this was a right inherent in the cultivator, and did not in any way emanate from the zemindar as sudder malguzar. Ejectment for any other cause than non-payment of the established quota of land tax I consider repugnant both to the sentiment of the people and to the whole spirit and tenor of their laws and customs. I maintain that in Bengal *every* resident ryot had a right of occupancy in his jote; and that *every* cultivator who settled down permanently to cultivate as a member of the village community became *ipso facto* a resident ryot. I hold that recognition as a resident ryot rendered such a settler liable to pay his share of the revenue assessed on his village according to established local rates, and not at any higher rates. I believe that it was not the intention of the Legislature in 1793 to alter this, or to confer on the zemindars a power of enhancing either individual ryot's rates or general local rates at pleasure, and I consider it *almost* certain that ordinary landlords had originally under our legislation no legal power of raising the customary prevailing rates at all. *Per contra*, I admit that, as a fact, ordinary landlord's profiting by special rules made in favour of auction-purchasers and devised to protect the Government revenue have persistently and with the sanction of the Courts (though until lately not with that of the Legislature) enhanced rents arbitrarily, and that this right cannot now equitably be denied them. But, on the other hand, I hold that the ryot's position cannot equitably be altogether destroyed. He is entitled in virtue of his ancient rights, and of the reiterated orders of the Home Government to secure him those rights, to be protected against arbitrary ejectment; he is entitled to demand that his rent-rates shall be those prevailing in, or legally established for, his neighbourhood; and he is entitled so far to benefit by the intentions of the Government in 1793 as to derive from his holding not merely maintenance, but a reasonable profit. If Act X fails in any degree to secure these rights, then I say the ryot on his side can fairly claim to have it amended to that end.

§ 9. Now all that a reasonable zemindar wants is to get his rents in easily, and to be able to share in the profits accruing from the rising prices of country produce. It is entirely to his advantage to have a settled tenantry, comfortable in circumstances, and able to stand the pressure of occasional bad seasons. If he has proper facilities for realizing his rents, he can have no proper motive for claiming a right of ejecting the ryots at his pleasure. He will willingly recognize the right of every well-to-do ryot to occupy. How, then, are we to secure well-to-do ryots? The only way is by restricting the legal demand of what has now become 'rent'. If it be once admitted that the ryot has a beneficial interest in his tenure, the corner-stone of agricultural prosperity may be considered laid. At present the zemindars complain that they cannot enhance in spite of all the advantages given them by Act X, which is the first law recognizing definitely their right to enhance with reference to the value of produce. I would not myself remove any one of the practical difficulties now in their way, unless they consent, once for all, to recognize the ryots' beneficial interest. If they want to see their own present position improved, they must, I submit, consent to all reasonable measures which will secure the general improvement of the country. I would take from them no income which they now enjoy, but I would not give them the ready means of making more, unless they are prepared to assist in recognizing and restoring the rights of the cultivators. Both zemindar and cultivator are proprietors in a sense, and each must respect the estate of the other.

§ 10. To my mind the only true insurance against famine is the maintenance, and, if need be, the creation of a substantial peasantry, such as the theory (though unfortunately not the practice) of Indian land law has always favoured. To secure this, then, I would have the State take into its own hands the settlement of rent-rates. I would not, I again repeat, take away from the zemindars any profits which they now enjoy, save in the few cases where these are obviously inordinate, as they certainly are where the landlord, while leaving all risks to the cultivators, seizes more than half the gross produce. But I would make it the business of the revenue authorities to regulate, as of old, the distribution of profits for the future; and I would protect the settled cultivators against every thing like arbitrary interference from above.

§ 11. In this view I suggested to the Commission the recognition of the right to occupy at the rates established by the revenue authorities, as the privilege of *every* ryot who had for three consecutive years cultivated land in a village. I took three years as a fair test of intention to become what, under the changed circumstances of the country and the arbitrary boundaries of survey villages, might reasonably be treated as the equivalent of the old resident ryot. Mr. O'Kinealy, Baboo Brojendro Kumar Seal, and, in the main, Mr. Harrison agreed with me. Unfortunately their views of the necessity of "upholding Act X" prevented Mr. Dampier and Mr. Field from also concurring, though I believe, apart from that, Mr. Dampier was inclined to favour the proposal. If this suggestion had been accepted, the complicated proposals for compensation for ejected ryots of three years' standing put forward by Mr. Harrison and embodied in Chapter IV of the Bill would be unnecessary.

§ 12. Holding these views, I am of course not satisfied with the provisions of clause (*e*) of section 20 of the Bill, which authorises the landlord and ryot to *contract* for the ejectment of the latter for breach of *any* stipulation made between them, nor with clause (*h*) of explanation 4 of section 19, which empowers the landlord to exact from an in-coming tenant a contract that rights of occupancy shall not accrue. I maintain that it is for the public good that rights of occupancy, as above explained, should be the universal rule and not the exception; and I would not allow a rule based on public policy to be upset by private contract, in making which one of the parties (the ryot) would always be at an unfair disadvantage, and compelled to subscribe to conditions which, if a free agent, he would undoubtedly repudiate. I find also that Courts of Equity at home now-a-days decline to enforce stipulations of ejectment in cases where an award of damages would equitably meet the case.

§ 13. Another point in the Bill to which I take exception is the concluding clause of section 45. If the State through its revenue officers is now to assess the rents payable to zemindars without interference from the civil courts, which are *ex hypothesi* tribunals unfit to deal with such economic cases, then it certainly should be at liberty to assess its own revenue, as from the earliest times and until the courts put an unforeseen construction on Act X, it always used to do. The State is more interested in imposing light assessments than any zemindar. It has, I admit, not always seen this in the past. But a great change is passing over the official mind in this respect; and at any rate the proper corrective authority in such cases is not the civil court, but the Secretary of State. Let us have, if necessary, a strict and well considered settlement law for the guidance of revenue officers, and then we may put the civil courts entirely on one side, instead of merely working round them as we are driven to do in Act VIII (B.C.) of 1879.

§ 14. I am disposed generally to concur in Mr. Dampier's remarks on Chapter XV. If the revnue authorities lay down recognised rates for the different classes of soil in a neighbourhood from time to time, and the landlord and the courts are made to accept these in cases of dispute, nearly all that is required will be done. The old pergunnah rates will practically have become re-established. Those rates will soon become general and accepted.

§ 15. The question of sub-letting is one of great difficulty, and I am by no means certain that the solution offered in the Bill, taken with the arbitrary distinction (based upon area), drawn between tenures and holdings, is likely to find acceptance or work smoothly. But it is a plan worth considering. I have already, in notes recorded on the proceedings, said all that I need say on the subject. I will only remark here that I still think the imposition of a *legal maximum* of rent for non-occupancy ryots would in the end have worked into the rural economy of the country, and served as a quiet, but effectual, check upon excessive sub-letting. I know well all the objections that can be urged against this notion of a legal maximum fixed with reference to gross produce; but there is the fact that from the days of Menu the people of India are familiar with the idea, and reconciled to any inequalities involved in its application. There must always be inequalities of taxation, and we must remember that we are really dealing with what was originally not rent, but a land tax.

§ 16. I need scarcely say that, in common with the majority of the members of the Commission, I protest against Baboo Peary Mohun Mookerjea's theory of enhancement, which practically amounts to this that when in any district an oppressive and litigious zemindar, by suing his ryots for monthly kists, and by other means of harassment, has succeeded in destroying their rights, and coercing them into paying exorbitant rents, now *those rents* should be taken as a fresh starting point for future enhancement, even though far in excess of any reasonable maximum. Let every such zemindar keep by all means his present profits as the law has given them, and salve his conscience as best he may; but let him not expect assistance from either Government or the Legislature in completing the ruin of his unhappy tenantry.

§ 17. I equally, of course, repudiate his idea that, if occupancy tenures are made transferable, zemindars should be "compensated for this new infringement of their rights." If such preposterous claims lead to a more general and searching enquiry as to what zemindary rights in Bengal really are, they may perhaps effect some good, though not perhaps altogether in the way contemplated by Baboo Peary Mohun Mookerjea.

§ 18. The other points in his remaks, and in that of Baboo Mohini Mohun Roy, seem to be sufficiently met by the report of the Commission.

DARJEELING; A. MACKENZIE.

The 23rd May 1880.

APPENDIX A.

Minute by Mr. A. Sconce on the Bill to "amend the Law relating to Recovery of Rent in the Presidency of Fort William in Bengal",—dated the 19th May 1858.

I TAKE it that the subject proposed for discussion and enactment in the 3rd and immediately succeeding sections of this Bill is the most important that ever was, or I may say that can be, submitted for the consideration of the Legislature. These sections present to us the first substantial attempt to redeem the pledge undertaken by the Government in clause 1, section 8, Regulation XVIII, 1793, to "protect those classes of the people who from their situation are most helpless and to enact laws necessary for the protection and welfare of ryots and other cultivators of the soil".

The legislation proposed in this matter naturally divides itself into two general heads: first, the legal character or title of the occupancy of the ryot; and second, the rent at which he is liable to be assessed.

In the 3rd and 4th sections of the Bill the nature of a ryot's occupancy is described by different designations. We have mentioned hereditary ryots, resident ryots, and all other ryots. I am not unconscious that the character of the occupancy of a ryot is in one sense very materially determined by the rent or rate of rent which he is bound to pay; but we are all familiar with the broad distinction of permanent and temporary rights of occupancy; and it seems to me most essential to consider clearly what our language means, and to define with legal exactitude the peculiar forms of the tenures for which we legislate.

In section 4 it is said every resident ryot has a right of occupancy in the land held or cultivated by him. In section 3 the words hereditary ryots are used. Is there any distinction between the word resident and the word hereditary; and if there be a distinction, to what does it amount? The right assumed to be vested in a resident ryot is of the highest value, for, paying the rent due from him, his occupancy cannot be disturbed. I suppose that the word resident imports permanent residence, or, in other words, hereditary occupancy, and is the English equivalent of Khood Kusht or Kudeemee ryot as indicated in section 32, Regulation XI of 1822. The right, however named, seems to be mainly founded on prescription: and perhaps the terms 'prescriptive occupancy' best define the existent right, and afford the best guide for testing a disputed tenure by the standard which the law recognizes. The first suggestion, therefore which I have to make is that the terms used in sections 3 and 4 should correspond and that, instead of the words "hereditary" or "resident", should be substituted "having a prescriptive right of occupancy".

I do not say, however, that in using an uniform definition the difficulties which daily arise for adjustment and adjudication are effectually solved. It may not be doubtful that a Khood Kusht ryot has a right of prescriptive occupancy, but prescription grows and is constituted by the effluxion of time, and thus an occupancy which being immature and new does not amount to a permanent right, by long recognition became eventually prescriptive. Rights like customs may be imperceptible in their origin and progress, which nevertheless in time we do not hesitate to characterize and to perpetuate. The last sentence in section 5 of this Bill appears intended to create a right of prescriptive occupancy in favour of a resident ryot with respect to land recently acquired by him. Possession and payment of rent for *three years*, supposing the tenant's right not to be otherwise limited by a written engagement, here create a right of occupancy. This provision, it wll be seen, is confined to land newly acquired by resident ryots. Land not before held on a prescriptive tenure becomes after three years included within the older land of the ryot, and subject, I suppose, to the same conditions of occupancy: and so, it seems to me, as mere occupation for a limited period restricts the proprietor's right of ouster, a similar provision should be made in favour of other ryots by reason of prolonged occupancy.

I believe that the experience of all of us shows that it is in vain to look for precisely marked distinctions between the old and recent occupancies of ryots. The term Kudeemee is merely old. Khood Kusht appears to signify the occupancy of land which is peculiarly a ryot's own, and for which others can bring no claim on an equal footing. But distinctions of a broad and general kind are sufficiently noticeable. On the one hand, a Khood Kusht ryot is known by a continued occupancy; by an occupancy continued at his own will, if also by the silent sufferance of the zemindar; and on the other, a temporary occupancy is most usually marked by circumstances which are incompatible with a permanent right, such as by recent and accidental acquisition, by variable occupation, or by a lease for a limited period. I should prefer therefore to take twelve years' occupancy recognized by the zemindar (mainly by the receipt of rent, but possibly also by other circumstances) to constitute a right of prescriptive occupancy, except that an occupancy renewable at the discretion of the zemindar may be inferred from the express terms of written engagement or from the general terms of a deed taken in connection with the circumstances under which the tenure originated or was continued. Where there is no written engagement, twelve years' occupancy alone will be sufficient to guarantee a permanent right; but if there be a deed without an express condition to quit, the mere termination of the lease will not import a limited occupancy unless that be inferrible from the circumstances of the case.

Section 3 of the Bill determines the principle by which ryots' lands are to be assessed. There are two scales: hereditary ryots being assessable at fixed rates, and other ryots being assessable at the ordinarily prevailing rates. No doubt it is not intended that a ryot holding land under prescriptive occupancy, who shall not have been previously liable to pay rent at an uniform rate, shall be entitled to a pottah limiting a demand which was before open to enhancement. I would say, however, that in practice our investigations for the determination of the amount of rent for which a ryot is liable are rarely aided by the ascertainment of uniformity whether as regards the fixed rates of Khood Kusht ryots or the ordinary rates of other ryots. There is nothing so unsatisfactory as a professed enquiry into rates. In fact, among ryots and tenants of all classes, there is little or no uniformity; and though, in the necessary nature of things, rents paid approximate in rate, it is not because a rate is followed as a standard, but because by comparing the specific assessments of individuals one with another, an average, as a matter of account, may be struck. Upon this understanding provision, it seems to me, should be made for the regulation of the assessment of land held upon a right of prescriptive occupancy. The amount of rent in each case chargeable should be determined rather by the uniformity of previous payments than by enforcing conformity with the rent chargeable on neighbouring lands. Each man's liability should be regulated with reference to his own rights, not with reference to rights which it is not his business to maintain.

I would hold to the principle deducible from the rule inculcated in 1793. In Regulation VIII of that year, zemindars were told how they were to deal with their Khood Kusht ryots. The spirit of the permanent adjustment of the public revenue pervaded the legal relations of zemindars and tenants. The Permanent Settlement was not one-sided; permanent for the landlord and not permanent for the tenant. On the contrary, the *de facto* positions of the tenants were accepted as representatives of the available assets of estates upon which, except for special cause, zemindars could not legally encroach. In support of the statement, it is scarcely necessary that I should refer to sections 51 and 60, Regulation VIII of 1793. But the thorough recognition of the then purpose of the Legislature is of immense importance, and the quotation of a familiar law may be pardoned. As to dependent talookdars, it seems clear that the *status-quo* tied the hands of a zemindar. The rent payable to him before the completion of the settlement, that and no more should he continue to receive, and it was expressly stipulated that even though the revenue due by himself should have been increased, it was not legally competent to him, except upon proof of certain contingencies, to demand an increase from talookdars. So as to Khood Kusht ryots. The rule which respect to them was that, except in proof of fraud, no increase should be demanded contrary to previous engagements, *unless it was shewn that the rents paid within the three years preceding the settlememts* had been reduced below the ordinary pergunnah rate. Here what is remarkable is that enhancement depended upon the reduction having been made within the *last three years.* If the rent of the ryot had been levied at an uniform amount for more than three years, the assessment could not be revised. This law seems to me to furnish our best authority for defining the fixity of rents. The rule has been in force from 1793 downwards, supposing a Khood Kusht ryot to have paid his rent for six years, the plea that the rate chargeable on him was too low could not be heard. In 1793 he was secured by this law, and the law cannot be less a protector to the ryot now. In 1793 the rule was that the assessment of land held under a prescriptive right of occupancy might be revised on proof that within three years the rent had been reduced below current rates; and the principle to which practical effect was thus given appears to be necessarily based on the admission that *the payment of an uniform rent for more than* three years established in prescriptive right to the continuance of that payment in future years. And, further, I conceive that the constitutional theory of the Permanent Settlement did effectually embody permanence of assessment to the tenant as well as to the zemindar. This truth is too precious to be let sleep. It applies to other tenants as well as to prescriptive occupancy to land, but it applies also to these. The existence of the tenancy of land distinct from that of a tenant-at-will, or of temporary lease-holder, entered into the definitive basis of the settlement. The rent assets derivable from these permanent tenancies were the fixed assets of the settlement by which the sudder jumma of each State was regulated; and, except upon special cause shewn, it was incompetent to zemindars to enhance the rent then leviable. The contract on the part of the State enforced a contract on the part of the zemindar. One portion of the rent of an estate was assumed to be a fixed (though unknown) sum, and the limitation of the demand of the State carried with it the stipulation that the rent payable by this particular class of tenants should be adhered to by the zemindar.

The tenancy of an estate at the time of the permanent settlement was, as it is now, divisible into three broad classes. First may be enumerated the class described as dependent talooks. The tenures included in this general classification are very variously designated according to the local nomenclature prevalent in each district, but the nature of the tenure in all cases imports a hereditary occupancy at a definite rent. Second is the more subordinate class that may or may not be included in the first—the jotes of ryots holding under a prescriptive occupancy. And third, ryots or other tenants that held only for a time. As to the first class, zemindars were declared to have no general right of enhancement. The rent then payable by the tenant was accepted as his ultimate liability. By the special and very limited conditions defined in section 51, Regulation VIII of 1793, a zemindar might show cause for raising his demand, but without such special cause the tenure of the tenant was unassailable. The same right is carried down to our own day by section 26, Act I of 1845. And again by section 60, Regulation VIII of 1793, as by Act I of 1845, the *existent* rights of the second class are equally respected.

It is for these reasons I say that the sudder jumma of the zemindar is not a constantly fixed and the rent of the tenant a constantly increasing quantity. Both by law are fixed: and it seems to me it should be our most earnest duty to give effect to the spirit of the law.

There can be no difficulty as to the rent of a jotedar holding land under a prescriptive occupancy from 1793 downwards. I do not speak only of the rate, but of the amount of rent. Rent so long paid cannot, in the spirit of the law, be open to enhancement.

The same rule should, I think, be extended to all under-tenures existing at the date of the Permanent Settlement; that is, I would abrogate the power reserved under special circumstances by section 51, Regulation VIII of 1793, to the zemindar to enhance the rent of talookdars or of other tenants holding under corresponding titles. Look at our present position. It is nearly 70 years since the settlement of 1790 was concluded. Throughout this long period the rent of the talookdar has been unchallenged. As a matter of course, so long as an estate is not sold for arrears of revenue, after such an interval the talookdars cannot be brought into court: but painful instances come before us in which sale-purchasers, strangers to everybody, strange to Government, strange to the tenantry, press their special rights to enhancement under the law. It is life or death to the talookdar. For long past half a century he or his ancestors have paid a fixed rent, which rent entered originally into the basis of the permanent settlement, and suddenly a claim is made on him to pay three thousand rupees instead of one thousand. It is truly life or death to him. At most, under the law, a purchaser cannot be entitled to enhance only, if he prove that his predecessor, the zemindar of 1790, might have demanded an increase because the *special* custom of the district allowed it, or a temporary abatement had been granted, or because it was conformable to the conditions of the tenure. But the zemindar of 1790 had foregone his advantages: and after so great an interval to expose a tenant to a revival of the claim which he practically felt himself unable to enforce, is to expose him to injurious peril.

I have said that with a prescriptive jotedar of 1790 there can be no difficulty. As to prescriptive rights of occupancy of a more recent origin, it seems to me that whatever difficulty as to the right of assessment may be presented, should be solved by the law, and not left to the unguided judgment of the courts. I would propose to declare that a ryot holding land under a prescriptive right of occupancy, who shall have uniformly paid, with or without a pottah, a definite amount of rent, shall not be liable to a demand for enhancement.

Resident parmanently-occupying ryots are not beholden to zemindars for their rights. If upon any point we are competent to exert the sacred force of common law in this country it is this. Labour and occupancy make the right of the prescriptive ryot. By Regulation VIII of 1793 the revision of a presciptive jotedar's assessment was limited to reduction effected within three years only: for later titles, I proposed twelve years. All ryots are not prescriptive ryots, but, having defined the nature of a prescriptive ryot's tenure, we should at the same time define the interest which, by the declared principles of the law, should be assured to him.

I may not have leisure to discuss other portions of this excellent Bill, but the earlier sections form a detached subject, and to this for the present I confine myself. With respect to the temporary and limited tenures, I would only request attention to the concluding portion of section 2, which provides that no ryots shall, under any circumstances, be liable to any enhancement of rent in excess of the rates specified in section 3, that is, customary pergunnah rates. Now the rule asserted in section 26, Act I of 1845, is that a zemindar may enhance "at discretion;" and as necessarily the limit of a local rate is inconsistent with a discretionary demand, the proposal in the Bill will supersede the present law.

APPENDIX B.

MINUTE.

Bill for the Recovery of Rents.

I AGREE generally with Mr. Currie as to the provisions of this Bill, and I would now transmit to him the various reports which have been made regarding it, in some of which will be found important discussions on points of principle, and not a few valuable suggestions on matters of detail, especially in Mr. Samuell's report, wherein also will be seen some important remarks on the law as applicable to bhowlee tenures.

2. There is a great and very remarkable consent as to appeal among all the natives consulted. All desire an appeal, and consider any curtailment of this privilege a disadvantage and a grievance. I would yield to this undoubtedly popular feeling, giving the appeal to the Collector in cases below the value of Rs. 50, except as to matters beyond the mere questions of receipt and payment of money, on which the appeal should be to the judicial tribunal.

Mr. Raikes, Judge of the Sudder Court, observes that by numerous precedents since the enactment of section 26, Act I of 1845, it has been determined that an auction-purchaser may eject or enhance at discretion the rents of all tenants, except those of the description specially protected by the section in question; whereas sections 3 and 4 of the present Bill extend that protection to other classes, and thus run counter to former legislation and to rulings of the courts founded thereon. I apprehend, however, that the object of that part of the Bill was no other than that of Act I of 1845, namely, to declare and uphold the rights of Khood Kusht and Kudeemee ryots, which ryots I take to be the class intended by the expressions "hereditary ryots holding lands at fixed rates" and "resident ryots and cultivators." Perhaps the opportunity should be taken to define what has always needed definition, viz., the term "Khood Kusht and Kudeemee royts." Mr. Sconce, Judge of the Sudder Court, has suggested that, instead of the terms used in sections 3 and 4 of the Bill, there should be substituted the words "ryots having a prescriptive right of occupancy;" and he would fix twelve years as the term of uninterrupted occupancy, after which ryot should come under the description he proposes. To this I would assent, believing that in doing this we shall be discharging a heavy obligation towards the ryots, long unfulfilled by our legislation. I would also use means to show that this was the definition of a "Khood Kusht or Kudeemee ryot," elsewhere alluded to in our code.

4. Mr. Sconce further proposes to declare the actual rents of such ryots permanent as to amount. But as to this I hesitate, believing it better to leave this to be determined by the new rent courts, as it now is in suits in the ordinary courts for what is termed nishust-jumma. And in the enumeration of the kinds of suits to be cognizable by the new courts I would distinctly insert suits for settling or fixing or enhancing rents.

5. There is some variation of opinion among the officers consulted as to the restriction put upon zemindars by section 8 of the Bill in respect to compelling the personal attendance of their ryots. Upon this I agree fully with Mr. Samuells that, although the withdrawal of this power will be severely felt by some small zemindars whose ryots have easy means of escape from their power, yet the present system leads to such grave abuses and allows of such intolerable oppression that it ought, without doubt, to be amended in the manner proposed by this Bill.

6. Nothing which is stated by any of the authorities who have reported on this Bill has altered my opinion in favour of constituting the new courts in the hands of Collectors and Deputy Collectors instead of Moonsifs. Deputy Collectors, very carefully chosen, will shortly be stationed over every district in the proportion of one to every three thanas; and, in the first

instance at all events, it will only be by putting the new jurisdiction into the hands of these officers that the essential protection and security of the ryot will be provided for. Hereafter it may be possible to use the Moonsifs in this way, but not now. And to employ the Moonsifs in administering the new law at first will be to risk all its proposed advantages.

F. J. HALLIDAY.

The 27th November 1858.

I COULD have wished for the benefit of a report from the Board of Revenue on this very important subject; but I have waited long for it, and have been obliged at last to write my opinion without it. Hereafter should it, when received, suggest any further observations, I shall not fail to supply them.

F. J. H.

THE LANDLORD AND TENANT BILL.

TABLE OF CONTENTS.

PRELIMINARY.

Sections.

Short title ... 1
Local extent ... 1
Commencement ... 1
Repeal ... 2
Definition of terms ... 3
Estate ... 3
Proprietor ... 3
Tenure ... 3
Tenure-holder ... 3
Under-tenure ... 3
Under-tenure of the first degree ... 3
Under-tenure of the second degree ... 3
Under-tenure of the third degree ... 3
Under-tenure-holder ... 3
Ryot ... 3
Holding ... 3
Occupancy holding ... 3
Under-ryot ... 3
Rent ... 3
Land ... 3
Tenant ... 3
Landlord ... 3
Lease. Pottah ... 3
Kabúliyat ... 3
Collectorate ... 3
Signed ... 3
Judge ... 3
Section ... 3
Saving of custom, &c. ... 4
Division of Act into Chapters and Parts ... 5

PART I.

THE SUBSTANTIVE LAW OF LANDLORD AND TENANT.

CHAPTER I.—OF TENURE-HOLDERS AND UNDER-TENURE-HOLDERS.

Tenure or under-tenure held at fixed rent since Permanent Settlement not liable to enhancement ... 6
Presumption from twenty years' holding at unchanged rent ... 6
Tenure or under-tenure held since Permanent Settlement liable to enhancement only in certain cases ... 7
Tenure-holder or under-tenure-holder liable to enhancement for land gained by alluvion and entitled to abatement for land lost by diluvion ... 8
Limits of enhancement of rent of tenures and under-tenures ... 9
Enhanced rent not to be more than double the previous rent. Enhancement may be gradual ... 10
Rent once enhanced may not be altered for ten years ... 10
Person to whom more than 100 standard bighas demised by Government or a proprietor, otherwise than for a term of year by year, to be deemed a tenure-holder within the meaning of Sections 8, 9 and 10 ... 11
Person to whom more than 100 standard bighas demised by tenure-holder or under-tenure-holder, otherwise than for a term or year by year, to be deemed an under-tenure-holder within the meaning of Sections 8, 9 and 10 ... 11
Limit of enhancement of rent of tenure-holder or under-tenure-holder mentioned in Section 11, if more than half the land demised was unreclaimed at the time of the demise ... 12
Permanent tenures and under-tenures declared heritable, devisable, and transferable ... 13
Legal incidents of a patni talook ... 14
Right to sublet ... 14
Provisions of Section 14 applicable, *mutatis mutandis*, to *patni* under-tenures ... 15

CHAPTER II.—OF RYOTS ENTITLED TO HOLD LAND AT FIXED RATES.

Ryots holding land at rates not changed since Permanent Settlement to continue to hold at those rates ... 16
Presumption if rent of land has not been changed for 20 years before suit ... 17
Exception in the case of temporarily-settled estates ... 17
Ryot holding at fixed rates liable to pay additional rent for land gained by alluvion and entitled to abatement for land diluviated ... 18

Sections.

CHAPTER III.—OF RYOTS WHO HAVE HELD LAND FOR TWELVE YEARS AND ACQUIRED A RIGHT OF OCCUPANCY.

Right of occupancy acquired by holding or occupying and cultivating for twelve years ... 19
Legal incidents of a right of occupancy ... 20
Saleable in execution of a decree for arrears of rent only ... 20
Transferable by sale or gift, and devisable ... 20
Heritable according to the law of inheritance of the tenant ... 20
May not be mortgaged ... 20
Ryot may not be ejected from land in which he has such right ... 20
Rent of occupancy ryot payable in kind not to exceed fifty per cent. of the gross produce in the case of staple crops. In the case of other crops, a special contract in writing may be made and enforced; if no such contract, value of twenty-five per cent. of staple crops may be recovered ... 21
Rent of ryot having a right of occupancy may be enhanced on what grounds ... 22
Meaning of term "landlord" ... 22
Meaning of term "land" ... 22
Rate fixed by Collector to be deemed a prevailing rate ... 22
Landlord entitled to whole increment, when effected solely by his agency or at his expense, otherwise to half only ... 23
Limit to enhancement upon the third or fourth ground ... 23
Calculation to be based upon a reasonable average of years ... 23
Rent enhanced on first, third or fourth ground not to exceed one-fourth of the average annual value of gross produce, calculated for staple crops ... 23
Board of Revenue to make rules for calculating average value and to determine and notify staples ... 23
Progressive enhancement may be directed ... 23
Ryot entitled to a deduction for road cess, &c. ... 23
No enhancement in certain cases of the rent of a ryot having a right of occupancy ... 24
Ryot having right of occupancy when entitled to abatement of rent ... 25

CHAPTER IV.—OF RYOTS WHO HAVE HELD LAND FOR THREE OR MORE BUT LESS THAN TWELVE YEARS.

Ryot who has cultivated or held land for three years protected from arbitrary eviction ... 26
Notice of demand of increased rent to be served on ryot ... 26
Any such ryot served with such notice to be liable for the increased rent demanded, if he remain in possession of the land ... 27
Any such ryot, if unwilling to pay such increased rent, may relinquish the land ... 27
Any such ryot so relinquishing his land entitled to one year's increased rent as compensation for disturbance ... 28
Ryot who has held for three but less than twelve years, if evicted, entitled to compensation for improvements ... 29
Landlord and ryot may agree as to payment of compensation. If they do not agree, Civil Court may decide. Principles of decision ... 30
Decree to be made for amount of compensation ... 30
Three years' ryot may claim abatement, and, if landlord refuse, may relinquish land and claim compensation ... 31

CHAPTER V.—OF RYOTS WHO HAVE HELD LAND FOR LESS THAN THREE YEARS.

Ryot who has held for less than three years may be evicted at the will of his landlord, but only through the Court ... 32
Such ryot may not sue for determination of future rent or for abatement ... 32
Any such ryot let into possession otherwise than for a term, or holding over on expiry of term, may not be ejected without notice to quit ... 33
Notice to quit when to be given and how to be served ... 33
Ryot served with notice to quit as provided in Section 33 ... 34
or ryot holding after expiry of term of less than three years without landlord's consent ... 34
may be sued, and ejected by Court. Period of wrongful holding not to count ... 34
Such ryot when ejected liable for full letting value of the land and also for damages ... 34
Ryot who has held land for less than three years not liable to pay higher rent, unless there be a written agreement or unless a notice has been served. Notice to state grounds of enhancement ... 35
Such ryot served with such notice may relinquish land. If he do not, he is liable to pay increased rent demanded up to limit of double former rent ... 35

CHAPTER VI.—OF THE USE OF LAND FOR BUILDING PURPOSES.

Ryot may not use land for building or other purpose inconsistent with use for which it was let ... 36
Rule does not extend to erection of a suitable residence ... 36
Ryot using land for other purpose may be served with notice of objection ... 37
If ryot does not obey notice served in reasonable time, and landlord obtains injunction, ryot disobeying injunction may be ejected ... 38
If notice not served within reasonable time, and no evidence that landlord was earlier aware of the change of the use of the land, ryot not liable to ejectment, and entitled to compensation for loss from removing buildings, &c. ... 39
Landlord being aware and without objection allowing ryot to spend money ... 40
or landlord serving no notice of objection for two years ... 40
estopped from afterwards objecting to change of use of the land ... 40
Possession for twelve years of land let for building or other such purpose gives a right of occupancy ... 41
Such interest to be heritable, transferable and devisable ... 41
In default of payment of rent, land with buildings, &c., may be sold ... 41
Rule for enhancing the rent of land used for building or other such purpose ... 42

CHAPTER VII.—OF MERGER.

When same person becomes owner of an estate and a tenure therein, the tenure to be merged in the estate ... 43
Proviso ... 43

Sections.

Deed declaratory of intention must be registered within three months and published upon land comprised in tenure ... 43
Provisions of Section 43 to apply to other cases in which the owner of a superior interest acquires an interest immediately inferior ... 44
Proprietary interest merged in paramount title when an estate is purchased by Secretary of State for India in Council ... 45

CHAPTER VIII.—OF THE REGISTRATION OF TRANSFERS OF TENURES, UNDER-TENURES, AND OCCUPANCY HOLDINGS.

Tenant to register transfer of his tenure, under-tenure, or holding in his landlord's sherishta. No division of the rent binding on landlord without his consent in writing ... 46
Landlord entitled to fee on transfer of a tenure, under-tenure, or occupancy holding ... 47
Effect of transfer and of registration of transfer or succession upon liability for rent ... 48
Consequence of non-registration of transfer other than transfer by sale in execution ... 49
Consequence of non-registration of a succession, or of a transfer by execution sale, in case of a tenure or under-tenure ... 50
Landlord may collect rents of tenure or under-tenure attached, but must account for balance after deducting his own rent, &c. ... 50
If collections insufficient, person entitled by succession or purchase liable for the deficiency ... 50
Landlord may after three months admit tenure or under-tenure to registry on payment of fine ... 50
Consequence of non-registration of a succession, or of a transfer by execution sale, in case of a holding ... 51
If landlord fails or refuses to register, civil suit will lie to compel him. Damages may be awarded where pecuniary loss has resulted ... 52
Transferee or devisee of patni tenure to give security to the extent of half the yearly rent ... 53
If security be not furnished within one month, proprietor may attach the tenure ... 53
Application to District Judge if security tendered be refused. District Judge may make order. No appeal from such order ... 53
Board of Revenue may prescribe form of register of successions and transfers. Persons concerned entitled to copies of entries on payment of fee of 4 annas ... 54

CHAPTER IX.—OF RENT, INSTALMENTS OF RENT, RECEIPTS FOR RENT, DEPOSITS OF RENT, APPORTIONMENT OF RENT, AND HYPOTHECATION FOR RENT.

Rent of tenure-holder or under-tenure-holder payable in what instalments and upon what dates ... 55
Rent of ryots payable in what instalments and on what dates ... 55
What to be deemed an arrear of rent. Interest on arrears ... 56

Receipts for Rent.

Tenant making payment to his landlord entitled to a receipt. What particulars to be inserted in such receipt. Landlord to keep counterpart ... 57
Tenant entitled to statement of account at close of the year. Landlord to keep counterpart ... 57
Landlords to provide themselves with book-forms of such receipts and account-statements, and the counterparts thereof ... 57
Penalty for omitting or refusing to furnish receipt or account-statement in form prescribed ... 57

Deposit of Rent in the Collectorate.

Tenant may in what cases deposit in the Collectorate his rent which has become due ... 58
Public officer may be specially empowered to receive deposits of rent ... 58
Conditions on which rent may be deposited ... 59
Receipt to be granted under his seal by Treasury Officer or Public Officer for rent so deposited, and to be a valid acquittance ... 60
Notice of the deposit to be given to the persons entitled, or claiming to be entitled, to the rent ... 61
And rent deposited may upon their application be paid to such persons on their receipt or joint receipt, or receipt of duly appointed agent ... 61
Refund to depositor or payment at joint request of him and landlord ... 61

Apportionment of Rent.

Apportionment of rent in what cases ... 62
Apportionment how to be made ... 63

Hypothecation for Rent.

Every tenure, under-tenure, and holding to be deemed hypothecated for its own rent, which shall be a first charge thereupon ... 64

CHAPTER X.—OF COPARCENERS.

District Judge may direct coparceners, who disagree, to be served with notice to show cause why they should not appoint a common manager ... 65
If no cause, or cause not sufficient, is shown, District Judge may make an order directing the appointment of a manager ... 65
If such order be not obeyed, District Judge may appoint manager ... 66
Removal of manager so appointed ... 66
"The Court of Wards Act, 1879," to apply to management by Court of Wards ... 66
Salary of manager. Manager to give security. Powers of manager. Duty to keep accounts. Removal ... 67
Management may be restored to coparceners if prepared to conduct it properly ... 68
Rent to be paid to coparceners on their joint receipt or on that of a manager. One coparcener may not sue for his share of rent separately ... 69
Exception 1—where tenant has contracted to pay a share of the rent separately ... 69
Exception 2—where tenant has been in the habit of paying a share of the rent separately ... 69
Exception 3—where coparcener cannot get his share of rent in consequence of collusion ... 69
One coparcener may not bring tenure to summary sale or measure the lands or enhance the rents of the tenants ... 70

Sections.

CHAPTER XI.—OF SOME MISCELLANEOUS RIGHTS OF LANDLORDS AND TENANTS.

Proprietors competent to grant leases for any period, in any form, and at any rent ... 71
Conditions ... 71
Landlord may not impose abwabs on his tenants ... 72
Or compel the attendance of his tenants, or enforce payment of rent otherwise than according to law ... 72
Landlord bound to put and maintain tenant in possession ... 73
Lease may not be granted for term exceeding lessor's interest ... 74
Lease for term exceeding lessor's interest valid to the extent of such interest and voidable as to excess merely ... 74
Lease granted by person having no interest valid to extent of interest subsequently acquired ... 74
Landlord entitled to make general survey and measurement, unless restrained by contract ... 75
Measurement in suits between landlords and tenants to be made according to Government standard of measurement ... 76
Conversion into local measure when necessary ... 76
Determination of the length of the standard pole in case of dispute ... 76
Tenant may not permanently alter condition of the land. Proviso as to improvements ... 77
Ryot entitled to cut trees planted by himself or his predecessor in title ... 77
Tenant not liable to transferree of landlord's interest for rent paid to former landlord without notice of the transfer ... 78
Relation of landlord and tenant in what cases determined by what occurrences ... 79
    By expiry of term—Exception ... 79
    By determination of landlord's limited interest ... 79
    Exception ... 79
    By relinquishment of land by ryot after notice given ... 79
    By abandonment ... 79
    By ejectment of ryot for non-payment of rent ... 79
    By ejectment of farmer or lease-holder for non-payment of rent ... 79
    By notice to quit in certain cases ... 79
    By disclaimer when a tenant disclaims his landlord's title and sets up an adverse title ... 79
    By sale for arrears of revenue or rent when purchaser elects to determine ... 79
Mere non-payment of rent does not determine relation of landlord and tenant ... 79
Ryot ejected from land entitled to the away-going crops, and to enter on land to remove them ... 80
Landlord may, if he wish, purchase such crops or products at a valuation to be made by Court in case of dispute ... 80

CHAPTER XII.—OF SPECIAL PROVISION FOR BEHAR.

Ryot has right of occupancy in land held for three years, if he held any land in same estate for twelve years previously ... 81
Ryot to have right of occupancy in land received in exchange from his landlord for land in which he had a right of occupancy ... 82
Rent payable in kind not to exceed half the gross produce, and in the absence of any express stipulation, to be half the gross produce ... 83
When rent is payable in kind or in money-value of a portion of the crop, landlord or tenant may, in case of dispute, petition Collector to depute an officer to make an award ... 84
Collector to depute an officer, whose award shall be binding unless set aside by the Civil Court ... 84
Danabandi or appraisement papers to be deposited in the Collector's Office within fifteen days after the appraisement ... 85
Ryot or landlord entitled to have rent, payable in kind or in equivalent value of share of gross produce, commuted to an annual money rent. Principle upon which such commutation should be made. Procedure for making ... 86

CHAPTER XIII.—OF DAMAGES AND PENALTIES.

Damages for exaction by landlord from tenant of sum in excess of the rent payable ... 87
Damages recoverable for withholding receipts for rent ... 88
Damages for extorting payment of rent by duress ... 89
The Court may award damages not exceeding 25 per cent. on rent not paid without reasonable or probable cause ... 90
The Court may award compensation, not exceeding 25 per cent. on amount claimed, to defendant improperly sued for rent ... 91

CHAPTER XIV.—OF LIMITATION.

Suits and applications in Third Schedule to be instituted and made within the time there prescribed, otherwise to be dismissed ... 92
Portions of The Indian Limitation Act applicable to such suits and applications ... 93
Computation of time where, until termination of litigation as to their mutual rights, landlord could not previously have sued tenant for rent ... 94

PART II.

THE PROCEDURE IN SUITS BETWEEN LANDLORDS AND TENANTS.

CHAPTER XV.—OF PROCEEDINGS TO ENHANCE THE RENT PAYABLE IN MONEY BY RYOTS HAVING A RIGHT OF OCCUPANCY, OR BY TENURE-HOLDERS OR UNDER-TENURE-HOLDERS.

Landlord having permanent transferable interest to proceed before what tribunal for enhancement of rent ... 95
Landlord having a farming or leasehold interest to proceed before what tribunal for enhancement of rent ... 95

I.—Proceedings in the Civil Courts.

Enhancement proceedings in the Civil Court to be commenced by plaint. Such plaint when to be filed, if intended to affect the rent of the following year ... 96
Plaint to set forth the grounds of enhancement ... 97

Sections.

Particulars to be given when enhancement is claimed on the *first* ground ... 97
Particulars to be given when enhancement is claimed on the *second* ground ... 97
Particulars to be given when enhancement is claimed on the *third* ground ... 97
The provisions of the Code of Civil Procedure to apply to suits for enhancement brought in the Civil Courts ... 98
Civil Court to decide all questions fairly raised between the parties ... 98

II.—Proceedings before the Collector.

Application may be made to Collector for enhancement or settlement of rents ... 99
Jurisdiction where lands situate in two or more districts ... 99
Applicant may ask for—
(1.) A Table of Rates, or ... 100
(2.) An Enhanced Jamabandi, or ... 100
(3.) A Settlement Jamabandi ... 100
Meaning of a "Table of Rates" ... 100
Meaning of a "Jamabandi" ... 100
Meaning of an "Enhancement Jamabandi" ... 100
Meaning of a "Settlement Jamabandi" ... 100

A.—Proceedings to obtain a Table of Rates.

Applicant for Table of Rates to present with his application a copy of the Table according to which he claims to collect rents from occupancy ryots ... 101
Notice to be given to ryots to assent or object within one month ... 102
If ryots do not assent to such rates, or if they or any of them object thereto, Collector to proceed to prepare a Table of Rates—to give reasons for allowing or disallowing any rate claimed by *The Applicant* ... 102
Table of Rates to be published with notice to *Applicant* and ryots that they may object ... 102
Collector may upon such objections alter or amend the Table of Rates ... 103
Collector to submit Table of Rates together with his proceedings and petitions of objection to superior revenue authorities for revision ... 103
Lieutenant-Governor to regulate powers of revision of Board and Commissioner ... 103
Board or Commissioner to have full power to revise, amend or alter Table of Rates, and may direct further enquiry and may hear any party interested ... 104
Table of Rates to be binding for ten years, subject to variation for alluvion or diluvion ... 105
Certified copy of Table of Rates conclusive as to provisions of Act having been followed ... 105
Applicant may enforce Table of Rates by suits in Civil Court ... 106
Or may apply for an Enhanced Jamabandi after three months ... 106
Costs of preparing such Enhanced Jamabandi when ryots recusant ... 106
Burden of proof not to be altered in consequence of preparation of Table of Rates ... 106

B.—Proceedings to obtain an Enhanced Jamabandi.

Applicant for Enhanced Jamabandi to present with his application a copy of the Enhanced Jamabandi, according to which he claims to collect rents from occupancy ryots ... 107
Notice to ryots to assent or object within one month ... 107
If all the ryots appear and assent to the Enhanced Jamabandi, Collector to make an order that it shall be binding upon both parties for ten years ... 108
If ryots do not all appear and assent, or if they or any of them object to the rates or the entries concerning them, Collector to proceed to prepare an Enhanced Jamabandi. Any ryot may at any time assent to entries concerning himself ... 108
Collector to draw up statement of proceedings and set forth grounds for allowing or disallowing rates or entries in copy of Enhanced Jamabandi ... 109
Enhanced Jamabandi to be published with notice to *Applicant* and ryots that objections may be made within one month ... 109
Collector to deal with objections—may take further evidence before passing orders ... 110
Appeal from Collector's order ... 110
Enhanced Jamabandi binding for ten years, if no objection made, or as soon as objection made has been disposed of. Clause (*b*) of Section 105 applicable thereto ... 111
Ryot compelled to pay rent to *Applicant* not liable to third party ... 111

C.—Proceedings to obtain a Settlement Jamabandi.

Applicant for Settlement Jamabandi to state in his application the circumstances under which he is unable to ascertain the rents payable to him ... 112
Notice to ryots to state particulars ... 112
If ryots give particulars required of them, and *Applicant* assent thereto, Collector to prepare Settlement Jamabandi accordingly. If particulars not given, or if given and challenged, Collector shall proceed to determine what rents are payable, by what ryots, for what lands ... 113
Collector to draw up statement of proceedings setting forth his determination and the grounds thereof ... 114

General Provisions.

Any number of landlords may join in an application, but Collector may direct separate proceedings ... 115
Collector may endeavour to bring about amicable compromise. Such compromise to be binding ... 116
Applicant to deposit expenses of proceedings when required. Consequence of failing to do so ... 117
Failure to deposit by some of several *Applicants* who (1) have joined under Section 115, or (2) are co-parceners ... 117
One of two or more *Applicants* may deposit sum required and recover from defaulter ... 117
No fresh proceedings for ten years after order of abatement or after withdrawal of *Applicant* without permission ... 118
Notices mentioned in Sections 101, 102, 107, 109 and 112 how to be published ... 119
Individual notice may be added to, or substituted for, general notice ... 119
Collector in his proceedings to be guided by such rules as Board of Revenue may lay down ... 120
Power of Board to make, revoke and alter rules with sanction of Government ... 120

Sections.

Collector may exercise powers of a Civil Court for summoning and examining witnesses, &c., and causing production of documents ... 121
Reference to arbitration. Provisions of Code of Civil Procedure to apply ... 121
Collectors to prepare Annual Price-Lists of Staple Crops under general directions of Board of Revenue to submit such Price-Lists to Board for approval or revision ... 122
Price-Lists, when approved or revised by Board, to be published in *Calcutta Gazette* and to be *primâ facie* evidence of prices of staple crops ... 122
Collector may make measurement, and may direct ryots to attend. Publication of notice ... 123
Consequence of non-attendance ... 123
Special Collector may be appointed for the purposes of this Act. Deputy Collector may act under supervision of Collector or Special Collector ... 124
Appointment of ministerial officers, &c. ... 125
On termination of proceedings, Collector to draw up account of total cost. Refund of balance. Recovery of deficiency ... 126
What items may be included in the cost of the proceedings ... 127
Proviso ... 127
When *Applicant* succeeds, ryots to be liable for costs. Costs not to exceed one year's enhanced rent ... 128
Costs may be made payable by instalments ... 128
Unpaid costs to be recoverable as arrears of rent ... 128
Ryots entitled to copies ... 129
District Judge may, on report of Civil Court, transfer to Collector any considerable number of cases instituted from same locality ... 130
Power of Collector to proceed *suo motu* for the settlement of rent when dispute exists ... 131

III.—Proceedings to enhance the Rent payable in money by Tenure-holders and Under-tenure-holders.

Landlord desiring to enhance rent of tenure or under-tenure to proceed in Civil Court ... 132
Plaint when to be presented in order to effect rent of following year ... 132

CHAPTER XVI.—OF THE RECOVERY OF ARREARS OF RENT IN CERTAIN CASES BY SUMMARY SALE WITHOUT DECREE.

Proprietors entitled to apply for summary sale of certain tenures ... 133
First sale may be applied for on 1st Baisakh ... 134
Specification of balances due to be stuck up at Collector's kachari, with notice of sale in default of payment ... 134
Similar notice to be stuck up at proprietor's sadr kachahri and a further notice to be published on the land ... 134
Service, and attestation of service, of notice directed to be published on the land ... 134
Second or mid-year sale may be applied for on 1st Kartik ... 135
Sale to take place if arrear to date equal one-fourth or more of the annual rent ... 135
Sale not to be stayed unless arrear claimed be lodged ... 136
But suit will lie for its reversal ... 136
Purchaser to be made party to such suit ... 136
Defaulter may apply for summary investigation before sale ... 137
But sale not to be stayed, unless amount of rent claimed be deposited ... 137
Omission to ask for investigation not to preclude action ... 137
Under-tenure-holders enabled to protect themselves from avoidance of their under-tenures upon sale of the tenure ... 138
  By paying in the amount for which the tenure is about to be sold ... 138
  Or by lodging money antecedently to meet arrears ... 138
Procedure if amount lodged be rent due from under-tenant ... 139
Procedure if amount lodged be an advance from private funds ... 139
Defaulting tenure-holder must pay total sum advanced with interest if he wants to recover his tenure ... 139
Lots to be sold in order. Proprietor's agent to be present with account and receipt for notice ... 140
Kistbandi to be produced at second mid-year sale ... 140
Proprietor exclusively responsible for correctness of papers, &c. ... 140
Sale to be held by Collector in public kachahri; procedure to be observed at sale ... 141
Re-sale if 15 per cent. not deposited, &c., or if remainder of purchase-money not paid. Deposit forfeited in latter case ... 141
Forfeited deposit how applied ... 141
Tenure declared to be sold free of incumbrances created by act of defaulter ... 142
No transfer, mortgage, &c., valid against proprietor unless he have consented thereto ... 142
All leases granted by defaulter are cancelled by sale ... 142
Exception in favour of *bonâ fide* engagements with ryots ... 142
Certificate to be given to purchaser on payment of full amount of purchase-money ... 143
Zemindar bound to put him in possession ... 143
Purchaser's remedy, if zemindar refuse or delay to put him in possession ... 143
Procedure in case of opposition to purchaser by defaulter or persons claiming under him ... 144
Collector to issue proclamation ... 144
Procedure in case of continued opposition by defaulter or his under-tenants ... 144
Rules for disposal of the sale proceeds ... 145
One per cent. to be credited to Government ... 145
Zemindar's claim for rent to be next satisfied; proviso ... 145
Balance to be sent to Government treasury to meet claims of persons endamaged by sale ... 145
Under-tenure-holders free to sue for price of their interest or compensation ... 145
Award of Court if plaintiff's claim found equitable ... 145
Suit not to lie if under-tenure-holder be himself in arrear at time of sale ... 145
Defaulter entitled to sale proceeds, if no claims, or after claims have been satisfied ... 145
Substitution of Government securities for cash in deposit ... 145
Rules for the exercise of jurisdiction in summary sales by the revenue authorities ... 146

CHAPTER XVII.—OF CERTAIN SPECIAL RULES OF PROCEDURE APPLICABLE TO SUITS BETWEEN LANDLORDS AND THEIR TENANTS OR AGENTS.

Code of Civil Procedure to apply to suits between landlords and their tenants or agents ... 147
Special Register of such suits to be kept in every Court ... 147

Sections.

Suits between landlords and their tenants or agents where to be instituted 148

Surburakars and tehsildars of khas estates may sue or be sued in their own names 149

Naibs or gomashtas thereto specially empowered to be authorized agents in cases arising out of the relation of landlord and tenant 150

Notice may be served upon, or money or fee tendered to, naib or gomashtah instead of landlord ... 150

Suit by landlord or tenant to determine conditions of tenancy 151

Claim for ejectment or cancelment of lease how to be put forward 152

Stay of ejectment on satisfaction of decree within 15 days 152

Suit for abatement of rent to be instituted by ryot before what tribunal 153

Suit for abatement by tenure-holder or under-tenure-holder or Mokarraridar to be instituted in the Civil Court 153

Procedure in such suits 153

Process of execution may be issued against person, or property, but not against both 154

Court to issue immediate execution in certain cases of ejectment, &c.... 155

In such cases execution not to be stayed pending appeal 156

No appeal from any decree of a District Judge or any Additional Judge for money below Rs. 100, unless right to enhance rent or title to land be determined by judgment 157

Review of judgment not admissible after 30 days 158

Notice or summons not specially provided for to be served under the provisions of *The Code of Civil Procedure* for service of summons on defendant 159

Suits against Agents.

Suits for money or accounts or papers against agents employed in collection or receipt of rents or management of land 160

Landlord may sue for exact sum of specific accounts or papers when known 160

When exact sum on specific papers not known in consequence of Agent not having rendered proper accounts, landlord may ask that Court to take an account 161

Summons to defendant to require him to show cause why he should not render accounts 162

If defendant fail to show cause or do not show sufficient cause, Court shall make an order that a proper account be filed, and shall fix a date by which it shall be filed. Such order how enforced ... 163

Plaintiff to be allowed time to examine account filed and object. Day to be fixed for hearing objections. Decree to be made after hearing 164

CHAPTER XVIII.—OF THE PROCEDURE IN SUITS FOR THE RECOVERY OF ARREARS OF RENT, &C., AND CERTAIN OTHER SUITS.

Procedure contained in this Chapter to be followed in certain suits, when relation of landlord and tenant is admitted or proved 165

District Judge may direct any such suit to be tried under the ordinary provisions of *The Code of Civil Procedure* 165

The Plaint, &c.

Plaint to be presented to Civil Court of lowest grade competent to try suit 166

Place of sueing how determined when there are different local limits of jurisdiction 166

While such suit is pending, no subsequent suit to be entertained for same subject-matter between same parties 166

Particulars to be contained in plaint 167

Plaint to be signed and verified 168

Rejection, amendment, return and admission of plaints 168

Parties, &c.

Substituting, dismissing and adding of parties 169

Person claiming adversely to the landlord or tenant, who are parties to the suit, not to be added as a party 169

Provisions of *The Code of Civil Procedure* as to joinder of causes of action, transfer of suits, and employment of recognized agents and pleaders made applicable to suits under this Chapter ... 170

Documentary Evidence, &c.

Certain provisions of *The Code of Civil Procedure* as to the production, &c., of documentary evidence made applicable to suits under this Chapter 171

Proceedings preliminary to hearing.

Issue of summons to defendant. Appearance how to be made 172

Personal appearance of parties 172

Summons to be for final disposal of case, and to direct defendant to produce documents and witnesses ... 173

Provisions for service of summons on defendant 174

Arrest of the defendant before judgment allowed in certain cases, but not in case of tenure, under-tenure, or occupancy holding hypothecated for its own rent 175

Time for return of warrant. Notice to be served on defendant when arrested 176

Procedure when defendant is arrested and brought before the Court under warrant 177

Procedure if warrant of arrest cannot be served upon the defendant 178

Compensation for arrest obtained without reasonable cause 179

Provisions of *The Code of Civil Procedure* as to attachment before judgment to apply to suits for arrears of rent 180

Standing crops, &c., attached may be reaped, gathered and stored by defendant, or if defendant neglect, by plaintiff 181

Ad interim sale of crops or products which cannot be kept without deterioration... 181

Provisions as to the summoning and attendance of witnesses 182

Sections.

Appearance of Parties.

Provisions as to the appearance of the parties and consequence of non-appearance 183
Defendant may file written statement of defence. No other written statement, unless called for by the Court 184
Provisions as to payment of money into Court and interest on money so paid in, and as to set-off ... 185
Court may direct a local investigation 186
Judgment at once, if either party fails without sufficient reason to produce his evidence 187

Adjournments.

Hearing of suit may be adjourned in what cases 188
Costs of adjournment 188
Hearing to be continuous 188
Course to be pursued, if parties fail to appear or produce their evidence at the adjourned hearing ... 189

The Hearing.

When both parties present, Court to ascertain and record whether each admits or denies the allegations of fact and documents of the opposite party 190
Oral examination of party or person able to answer material question 191
Substance of examination to be reduced to writing and form part of the record 191
Witnesses to be examined in open Court in presence and hearing of Judge 192
Evidence of witnesses in what manner to be recorded 192
Judge rendered unable to make memorandum, to cause it to be made from his dictation 192
Some provisions of *The Code of Civil Procedure* as to mode of recording evidence made applicable ... 193
Judgment when to be pronounced. Provision of *Code of Civil Procedure* applicable thereto ... 194
Provisions as to the decree, its contents, &c. 195
Interest on amount of decree 195
Decrees in certain suits to describe the land 195
Decree to show separately arrears decreed in respect of each tenure, under-tenure, or occupancy holding liable to sale for its own arrears 195
Parties entitled to certified copies of judgment and decree 196

Execution of Decrees.

General Provisions.

Application for execution by whom to be made; to be in writing unless made when judgment is pronounced, in which case it may be made verbally 197
Provisions of *The Code of Civil Procedure* applicable to the execution of decrees in suits under this Chapter 198
Mode of executing decree for ejectment of ryot or for restoring ryot to possession 199
Mode of executing decree for ejecting, or restoring to possession, a tenure-holder, under-tenure-holder, or other person in possession of land occupied by tenant 200

Procedure for the Sale of Tenures, Under-tenures, and Holdings in Execution of Decrees for their own Rent.

Form of application for execution of a decree for arrears of rent of a tenure, under-tenure, or occupancy holding 201
Copy of entry in Register prescribed in Section 54 to be filed with application 201
If application in proper form, Court shall direct sale of tenure, under-tenure, or occupancy holding. If not in proper form, may be amended or rejected 202
Notice of sale of tenure, under-tenure, or occupancy holding how to be published 203
Notification to state that sale shall be subject to incumbrances if sum bid satisfy decree, otherwise that sale may be made free of incumbrances 203
Date of the sale how to be fixed 203
Sale to be stayed only by payment into Court of amount of decree with costs, or by confession of satisfaction by decree-holder 204
What persons may pay the amount of the decree and costs into Court so as to stay the sale ... 205
Person paying money into Court under clause (*c*) or (*d*) may sue defaulter for the same as money lent to him 205
Sections 138 and 139 applicable in the case of certain tenures 205
Tenure, under-tenure, or holding to be first put up to sale subject to incumbrances, and sold, if bidding cover amount of decree and costs 206
Meaning of "incumbrances" 206
If bidding does not cover amount of decree and costs, and decree-holder desires a sale free of incumbrances, such sale may be ordered upon an adjourned date 207
If no bid, decree-holder to be required to bid 207
Rules applicable to sales under Section 206 or 207 208
Sale to be confirmed when price paid. Certificate to be given to the purchaser. Officer to be deputed to put him in possession 209
Benami purchaser not recognized 209
Purchaser under clause (*a*) of Section 207 to acquire tenure, under-tenure, or occupancy holding free of all incumbrances not made under written authority of landlord 210
Proviso. Khud Kasht ryots or resident and hereditary cultivators may not be ejected 210
Incumbrances may not be avoided, if judgment-debtor or person colluding with him purchase ... 210
Purchaser may enhance rents according to law, but may not eject save as provided in this Act ... 210
Rules for disposal of the sale-proceeds 211
Costs of sale to be paid first 211
Amount due under the decree to be next satisfied 211
If balance remains, rent which fell due after the arrears recovered by the decree may be paid therefrom 211
Balance, if any, after liquidating such rent, to be paid to the judgment-debtor 211
Sale may be set aside only if material irregularity and substantial injury are proved 212
Order setting aside sale to direct refund of the purchase-money, and may be enforced as a money decree 212
When judgment-debtor obtained possession, Court may take an account 212

Sections.

Cases in which decree may be enforced by attachment and sale of movable and immovable property, and by arrest and imprisonment of judgment-debtor 213

Attachment and Sale of Movable and Immovable Property.

Provisions of *The Code of Civil Procedure* as to attachment and sale of movable and immovable property applicable to the execution of decrees in suits instituted and decided under this Chapter 214

Of Arrest and Imprisonment.

Order for committing to, or detaining in, jail a judgment-debtor arrested before judgment, who fails to satisfy the decree 215

Execution may be had against surety who fails to deliver judgment-debtor into custody 216

Certain sections of *The Code of Civil Procedure* as to arrest and imprisonment applicable to the execution of decrees under this Chapter 217

Miscellaneous Provisions of The Code of Civil Procedure applicable to suits under this Chapter.

Certain Chapters and Sections of *The Code of Civil Procedure* applicable generally to suits under this Chapter 218

Of Appeals.

Appeals from original and appellate decrees to be governed by the provisions of *The Code of Civil Procedure* 219

No appeal in suits for arrears of rent in which the amount claimed does not exceed ten rupees ... 220

District Judge to have power of revision 220

Appeals from orders governed by the provisions of *The Code of Civil Procedure.* Provisos ... 221

Review of Judgment.

Review of judgment to be regulated by the provisions of *The Code of Civil Procedure* 222

Res Judicata; proviso 223

Discretion to issue process free of charge 224

Revenue Agent may in Moonsif's Court do any act which may be done by a pleader 225

SCHEDULES.

A
BILL
TO

Consolidate and Amend the Law of Landlord and Tenant within the Territories under the Administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to consolidate and amend the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal: It is hereby enacted as follows:—

PRELIMINARY.

Consider Calcutta.
[1]The Jalpaigori and Darjiling Divisions.
The Hill Tracts of Chittagong.
The Sonthal Parganahs; *see* I. L. R. 4 Calc. 222.
The Chota Nagpore Division.
The Mahals of Angul and Banki.

Short title.

1. This Act may be called "The Bengal Landlord and Tenant Act, 1880:"

Local extent.

It extends to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Division of Orissa and the Scheduled Districts specified in the third part of the First Schedule of "The Scheduled Districts Act, 1874[1]": it shall be lawful for the said Lieutenant-Governor to extend the whole or any part of this Act to the Division of Orissa by a notification published in the *Calcutta Gazette;* and from the date of the publication of the said notification this Act or such part as may be specified in such notification shall have operation in the said Division.

Commencement.

It shall come into force on the day of 1880.

Repeal.

2. The enactments specified in the First Schedule hereto annexed are hereby repealed from and after the commencement of this Act. When this Act or any part of it is extended to the Division of Orissa, such of the said enactments as are in force in that Division, or, where a part only is extended, so much of them as is inconsistent with such part, shall cease to have operation in the said division:

provided that—

(1) *any enactment or document referring to any Act or enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof:*

(2) *this repeal shall not affect*

(*a*) *the past operation of any enactment hereby repealed, nor anything duly done or suffered thereunder: nor*

(*b*) *any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment hereby repealed: nor*

See N. W. P. Act XVIII, s. 2.

(*c*) *any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability as aforesaid; and any such investigation, legal proceeding and remedy may be carried on as if this Act had not passed: and*

(3) *this repeal shall not revive any enactment, right, privilege, matter, or thing not in force or existing at the commencement of this Act.*

Article 1 of the Digest.

Definitions of terms.

3. In this Act the following words and expressions are used in the following senses, unless a different intention appears from the context:—

Estate.

"Estate" means land included under one entry in any of the General Registers of Revenue-paying Lands and Revenue-free Lands, prepared and maintained under the law for the time being in force by the Collector of a District:

Proprietor.

"Proprietor" means a person who as owner is solely or jointly in possession of an estate or a share of, or interest in, an estate:

Tenure.

"Tenure" means (1) a rent-paying interest in land immediately subordinate to that of a proprietor, and superior to that of a ryot; (2) a revenue-free or rent-free interest in land, when there exists no rent-paying interest in the same land between the proprietary interest and such revenue-free or rent-free interest:

Illustrations.

(a) A *patni* interest is a tenure.

(b) An *ijarah* or farm for a term of years is a tenure.

(c) A holds 120 bighas of valid revenue-free land situate within the limits of B's revenue-paying estate and not included under any entry in the General Register of Revenue-free Lands maintained by the Collector of the District under the law for the time being in force. This land is in the actual possession of ryots who pay their rents to A. The interest of A in such land is a tenure.

(d) B, the proprietor of a revenue-paying estate, makes a rent-free grant to A of 50 bighas of land included in such estate and in the actual possession of ryots. A, by virtue of such grant, becomes entitled to the rents payable by these ryots. A's interest in these 50 bighas is a tenure.

Tenure-holder.

"Tenure-holder" means a person who as owner is solely or jointly in possession of a tenure or a share of, or interest in, a tenure:

Under-tenure.

"Under-tenure" means (1) a rent-paying interest in land subordinate to that of a tenure-holder, and superior to that of a ryot; (2) a rent-free interest in land when there exists a rent-paying interest in the same land between the proprietary interest and such rent-free interest:

Under-tenure of the first degree.

Under-tenure of the second degree.

Under-tenure of the third degree.

Where there are more under-tenures than one in the same land, the under-tenure immediately subordinate to that of the tenure-holder is termed an "under-tenure of the first degree"; the under-tenure immediately subordinate to the under-tenure last mentioned is termed an "under-tenure of the second degree"; the under-tenure immediately subordinate to that last mentioned is termed an "under-tenure of the third degree"; and so on in order:

Illustrations.

(a) A *dar-patni* interest is an under-tenure of the first degree.

(b) A *se-patni* interest is an under-tenure of the second degree.

(c) A *dar-ijarah* is an under-tenure.

(d) B holds a *patni* tenure of 2,000 bighas of land under C, the proprietor of the Gopalpur estate. B makes a rent-free grant to A of 80 out of the 2,000 bighas. These 80 bighas are in the actual possession of ryots, who after the grant pay their rents to A. The interest of A is an under-tenure.

Under-tenure-holder.

'Under-tenure-holder" means a person who as owner is solely or jointly in possession of an under-tenure, or a share of, or interest in, an under-tenure:

Ryot.

Subject to the provisions of section 11 "*ryot*" *means a person who holds land, or who occupies and cultivates land, if such person or his predecessor in title was originally let into possession of such land for the purpose of cultivating it or bringing it under cultivation. A person cultivates land or brings land under cultivation within the meaning of this definition, when the cultivation is carried on by himself, or by the members of his family, or by servants, or by hired labourers, or by persons to whom he has sublet the land or any part of it, or partly by some and partly by others of these persons:*

Holding.

"Holding" means the interest of a ryot in the land which *he holds or occupies and cultivates, and which forms the subject of a separate tenancy.*

Occupancy holding.

"Occupancy holding" means a holding in which a ryot *or any such tenant as is mentioned in section* 41 has a right of occupancy:

Under-ryot.

"Under-ryot" means a person to whom a ryot has sublet his holding or a portion thereof:

Rent.

"*Rent*" *means whatever is payable or deliverable by a tenure-holder, under-tenure-holder or occupancy-ryot to the proprietor, tenure-holder, or under-tenure-holder possessing the interest immediately superior in the land held by him, in recognition and satisfaction of such superior interest; or whatever is payable or deliverable as a return or compensation for the use or occupation of land or for any rights of pasturage, forest rights, fisheries, or the like:*

Consider the definition of "land" in the General Clauses Act V (B.C.) of 1867.

Land.

"Land" *includes woods and water thereupon:* when applied to land cultivated or held by a ryot, it means land used or intended to be used for agricultural or horticultural purposes, or the like. In Chapter XVIII it *means (a) tenures, under-tenures, and holdings; (b) land used or let to be used for agriculture, horticulture, pasture, or other similar purpose, or for dwelling-houses, manufactures, or other similar buildings: and (c) rights of pasturage, forest rights, fisheries, and the like:*

Explanation.—Bastú or homestead land is land used for agricultural purposes when it is occupied by a ryot, and together with the land cultivated by such ryot forms a single holding:

Tenant.

"Tenant" means a person liable to pay or deliver rent:

Landlord.

"Landlord" means a person to whom a tenant is liable to pay or deliver rent:

Lease. Pottah.

"Lease" or "Pottah" means a written instrument creating or continuing the relation of landlord and tenant, and executed by the landlord in favour of the tenant:

Kabúliyat.

"Kabúliyat" means a written instrument creating or continuing the relation of landlord and tenant, and executed by the tenant in favour of the landlord, and includes the counterpart of a lease or pottah :

Collectorate.

"Collectorate" means the district to which a Collector is appointed, and does not include lands situate beyond the local limits of such district, but forming part of an estate, the revenue of which is paid into the Treasury of the said district :

Signed.

"Signed" includes "marked" when the person making the mark is unable to write his name ; it also includes "stamped" with the name of the person referred to :

Judge.

"Judge" means the presiding officer of a Court :

Section.

"Section" means a section of this Act.

Saving of custom, &c.

Article 2 of the Digest.

4. Nothing in this Act is intended to affect—

(*a*) any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions ;

(*b*) the powers and duties of Settlement Officers as by law defined and limited ;

(*c*) the provisions of any special or local law not hereby repealed either expressly or by necessary implication[1].

Illustration.

The custom of a ryot subletting his land for a term, or from year to year, is not inconsistent with, and is not expressly or by necessary implication modified or abolished by the provisions of this Act. It is not intended that such custom should be affected by this Act.

Division of Act into Chapters and Parts.

5. This Act is divided into Parts and Chapters, as follows :—

PART I.—*The Substantive Law of Landlord and Tenant.*

Chapter I.—Of Tenure-holders and Under-tenure-holders.
Chapter II.—Of Ryots entitled to hold land at Fixed Rates.
Chapter III.—Of Ryots who have held Land for Twelve years and acquired a Right of Occupancy.
Chapter IV.—Of Ryots who have held Land for Three or more, but less than Twelve, years.
Chapter V.—Of Ryots who have held Land for less than Three years.
Chapter VI.—Of the use of Land for Building Purposes.
Chapter VII.—Of Merger.
Chapter VIII.—Of the Registration of Transfers of Tenures, Undertenures, and Occupancy-holdings.
Chapter IX.—Of Rent, Instalments of Rent, Receipts for Rent, Deposit of Rent, Apportionment of Rent, and Hypothecation for Rent.
Chapter X.—Of Coparceners
Chapter XI.—Of some Miscelloneous Rights of Landlords and Tenants.
Chapter XII.—Of Special Provisions for Behar.
Chapter XIII.—Of Damages and Penalties.
Chapter XIV.—Of Limitation.

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[1] L. R., 8 C. P. 416 : 1 Ex. D. 411.

Part II.—*The Procedure in suits between Landlords and Tenants.*

Chapter XV.—Of Proceedings to enhance the Rent payable in money by Ryots having a right of Occupancy, and by Tenure-holders and Under-tenure-holders.
Chapter XVI.—Of the Recovery of Arrears of Rent in certain cases by Summary Sale without Decree.
Chapter XVII.—Of Certain Special Rules of Procedure applicable to suits between Landlords and their Tenants or Agents.
Chapter XVIII.—Of the Procedure in Suits for the Recovery of Arrears of Rent, and certain other Suits.

PART I.

The Substantive Law of Landlord and Tenant.

Article 20 of the Digest.

Chapter I.—Of tenure-holders and under-tenure-holders.

Tenure or under-tenure held at fixed rent since Permanent Settlement not liable to enhancement.

6. (*a*) No *tenure-holder or under tenure-holder,* who otherwise than under a terminable lease holds his tenure or under-tenure at a fixed rent which has not been changed from the time of the Permanent Settlement of Bengal, Behar and Orissa, *made in the year of the Christian era one thousand seven hundred and ninety-three,* shall be liable to any enhancement of such rent.

Article 21 of the Digest.

Presumption from twenty years' holding at unchanged rent.

(*b*) Whenever it shall be proved in any suit under this Act that the rate of rent, at which any such tenure or under-tenure is held, has not been changed for a period of twenty years before the commencement of such suit, it shall be presumed that such tenure or under-tenure has been held at that rent from the time of such Permanent Settlement, unless the contrary be shown, or unless it be proved that *such tenure or under-tenure was created,* or such rent fixed at some later period.

Article 19 of the Digest.

Exception.—In the case of a tenure or under-tenure situate in an estate not permanently settled, such presumption shall not operate to prevent the enhancement of the rent of such tenure or under-tenure upon the expiry of a temporary settlement of the revenue, unless the right to hold such tenure or under-tenure for ever at a fixed rate of rent has been expressly recognized in Settlement Proceedings by a Revenue Authority empowered by Government to make definitively or confirm Settlements.

Tenure or under-tenure held since Permanent Settlement liable to enhancement only in certain cases.

7. No *tenure or under-tenure* which has been held since the time of *such* Permanent Settlement is liable to enhancement save and except upon proof (1) that the landlord under whom it is held is entitled to enhance the rent thereof either (*a*) by the special custom of the district, or (*b*) by the conditions under which the tenure or under-tenure is held; or (2) that the tenure-

holder or under-tenure-holder, by receiving abatements from his rent, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Explanation I.—In order to entitle a tenure-holder or under-tenure-holder to the benefit of this section, it is sufficient for him to show that his tenure or under-tenure existed and could have been registered in the Collector's office at the time of the Permanent Settlement, even though it were not actually registered.

New.

Explanation II.—An abatement of rent granted to a tenure-holder or under-tenure-holder for land taken under the provisions of "The Land Acquisition Act, 1870", is not an abatement within the meaning of this section.

Tenure-holder or under-tenure-holder liable to enhancement for land gained by alluvion and entitled to abatement for land lost by diluvion.

8. Notwithstanding anything contained in section 6 or in section 7, every tenure-holder and under-tenure-holder shall, in the absence of an express contract to the contrary, be liable to pay additional rent for land added to his tenure or under-tenure by alluvion, and shall be entitled to abatement of rent in respect of any diminution of the area of his tenure or under-tenure caused by diluvion or otherwise. Such increase or abatement of rent shall bear to the rent previously paid the same proportion which the increase or diminution of area bears to the previous area of the tenure or under-tenure.

As to the *forum*, see section 132.

Limits of enhancement of rent of tenures and under-tenures.

New.

9. In any case in which the rate of rent of a tenure-holder or under-tenure-holder is liable to enhancement, such rate may be enhanced up to the limit of the customary rate payable by persons holding similar tenures or under-tenures in the vicinity; or, where no such customary rate exists *or in any case falling within the Exception to section* 6 up to such limit *as to the Court shall appear fair and equitable: provided that in cases where no customary rate exists* the profit of such tenure-holder or under-tenure-holder shall not exceed *thirty* per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting such rents. *If such tenure-holder himself occupies any portion of the land included in this tenure or under-tenure or has made a rent-free grant of any portion of such land, a reasonable rent shall be calculated for such portions and included in the gross rents aforesaid.*

Enhanced rent not to be more than double the previous rent. Enhancement may be gradual.

10. (*a*) In any case in which the rent of a tenure-holder or under-tenure-holder is found to be liable to enhancement, the enhanced rent shall not be more than double the rent previously payable, and the Court may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Rent once enhanced may not be altered for ten years.

(*b*) When the rent of a tenure-holder or under-tenure-holder has been enhanced by a Civil Court under the provisions of this Act, such rent shall not be liable to alteration for a period of ten years next ensuing after the date of the final order so enhancing such rent.

Explanation.—An increase of rent on account *of land gained by alluvion or a decrease of rent on account of land lost by diluvion is not an alteration within the meaning of clause (b) of this section.*

New.

Person, to whom more than 100 standard bighas demised by Government or a proprietor, otherwise than for a term or year by year, to be deemed a tenure-holder within the meaning of sections 8, 9 and 10.

11. (*a*) Notwithstanding any custom or contract to the contrary, every person, to whom more than one hundred standard bighas of land have been demised by a single demise, otherwise than for a term or year by year, by Government or by a proprietor, whether before or after the commencement of this Act, and who has obtained possession of the land so demised, shall be deemed to be a tenure-holder within the meaning of sections 8, 9 and 10. Every such tenure which has been held by any such person or his heir for twelve years, shall be permanent and transferable.

Person, to whom more than 100 standard bighas demised by tenure-holder or under-tenure-holder otherwise than for a term or year by year, to be deemed an under-tenure-holder within the meaning of sections 8, 9 and 10.

(*b*) Notwithstanding any custom or contract to the contrary, every person to whom more than one hundred standard bighas of land have been demised by a single demise, otherwise than for a term or year by year, by a tenure-holder or under-tenure-holder, whether before or after the commencement of this Act, and who has obtained possession of the land so demised, shall be deemed to be an under-tenure-holder within the meaning of sections 8, 9 and 10. Every such under-tenure which has been held by any such person, or his heir, for twelve years, shall be permanent and transferable.

New.

Limit of enhancement of rent of tenure-holder or under-tenure-holder mentioned in section 11 if more than half the land demised was unreclaimed at the time of the demise.

12. If more than half the land included in any such single demise, as is mentioned in section 11, was unreclaimed at the time of making such demise, and if the reclamation of such unreclaimed land were one of the objects of such demise, and such unreclaimed land were reclaimed accordingly, the rent of any such tenure-holder or under-tenure-holder as is mentioned in section 11, notwithstanding anything contained in section 9, shall not be enhanced, so as to reduce his profit below twenty per centum of the balance mentioned in, and calculated according to the provisions of, section 9; and the Court may, in any case in which such rent is enhanced, allow to any such tenure-holder or under-tenure-holder by way of profit any such share of the said balance exceeding twenty per centum thereof, as to such Court may appear fair and equitable.

New.

Permanent tenures and under-tenures declared heritable, devisable, and transferable.

13. All permanent tenures and under-tenures are declared to be heritable, *devisable*, capable of being transferred by sale, gift, or otherwise at the discretion of the holder, answerable for his personal debts, and subject to the process of the Civil Courts, as other immovable property.

Reg. VIII of 1819, ss. 1 and 3. Article 26 of the Digest.

Legal incidents of a patni talook.

14. (*a*) A patni talook is a tenure held at a rent fixed in perpetuity, heritable, *devisable*, capable of being transferred by sale, gift, or otherwise at the discretion of the holder, answerable for the personal debts and subject to the process of the Civil Courts in the same manner as other immovable property.

(*b*) A patni tenure is not liable to be cancelled for default in payment of the rent thereof, but such tenure may be brought to sale by public auction, and the defaulting patnidar or holder of such patni tenure is entitled, subject to the provisions of this Act, to any surplus proceeds of sale beyond the arrears of rent due upon such tenure.

Right to sublet.

(*c*) A patnidar is entitled to let out the lands composing his tenure in any manner most conducive to his interest, and any engagements entered into by such patnidar with others are legal and binding between the parties to the same, their heirs and assignees : provided, however, that no such engagement shall operate so as to prejudice the right of the proprietor to hold the patni tenure answerable for any arrear of his rent in the state in which he granted it, and free of all incumbrances resulting from the act of his tenant, the patnidar.

Explanation.—In any case in which the interest in land created by a lease is therein denominated a patni taluk or patni-tenure, it shall be presumed that a tenure having the incidents specified in this section is intended.

Provisions of section 14 applicable, *mutatis mutandis*, to *patni* under-tenures.

15. The provisions of section 14 shall apply, *mutatis mutandis*, to the following under-tenures, namely, a *patni taluk* of the second degree, which is termed a "darpatni," a *patni taluk* of the third degree, which is termed a "sepatni", and a *patni taluk* of the fourth degree, which is termed a "chahar-patni."

CHAPTER II.—OF RYOTS ENTITLED TO HOLD LAND AT FIXED RATES.

Ryots holding land at rates not changed since Permanent Settlement to continue to hold at those rates.

16. Ryots who hold lands at fixed rates of rent which have not been changed from the time of the Permanent Settlement of *Bengal, Behar and Orissa made in the year of the Christian era one thousand seven hundred and ninety-three*, are entitled to *continue to hold their lands* at those rates.

Article 37 of the Digest.

Explanation I.—In the case of rent payable in kind, a fixed proportion of the produce is a fixed rate within the meaning of this section.

Explanation II.—The operation of this section is not affected by the fact of the land having been demised to different persons, or transferred, or separated from other land which formed with it a single holding, or amalgamated with other land into one holding, if the rate of rent has not been altered thereby.

Presumption if rent of land has not been changed for 20 years before suit.

17. Whenever it shall be proved in any suit *or proceeding* that the rent at which land is held by a ryot has not been changed for a period of twenty years before the commencement of such suit, it shall be presumed that the land has been held at that rent from the time of such Permanent Settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

Article 38 of the Digest.

Explanation.—Such presumption may be made even though the ryot do not plead in express terms that the land has been held from the time of the Permanent Settlement at a rent which has not been changed since that time, provided

A similar explanation may perhaps be well appended to section.

that there be nothing in his statements inconsistent with its having been so held.

Exception in the case of temporarily-settled estates.

Exception.—In the case of a ryot holding land in an estate not permanently settled, such presumption shall not operate to prevent the enhancement of the rent of such land upon the expiry of a temporary settlement of the revenue, unless the right to hold such land for ever at a fixed rate of rent has been expressly recognized in Settlement Proceedings by a Revenue Authority empowered by Government to make definitively or to confirm settlements.

New.

Ryots holding at fixed rates are liable to enhancement for alluviated land and entitled to abatement for diluviated land under the N. W. P. Act XVIII of 1873, s. 18.

Ryot holding at fixed rates liable to pay additional rent for land gained by alluvion, and entitled to abatement for land diluviated.

18. A ryot entitled to hold land at fixed rates shall be liable to pay additional rent for land added to his holding by alluvion, and shall be entitled to abatement of rent in respect of any diminution of the area of his holding caused by diluvion. Such increase or abatement of rent shall bear to the rent previously paid the same proportion which the increase or diminution of area respectively bears to the previous area of such holding.

CHAPTER III.—OF RYOTS WHO HAVE HELD LAND FOR TWELVE YEARS AND ACQUIRED A RIGHT OF OCCUPANCY.

See Article 40 of the Digest.

Right of occupancy acquired by holding, or occupying and cultivating for twelve years.

19. Subject to the provisions of section 11, any ryot, who for a continuous period of twelve years has as a tenant held, or has as a tenant occupied and cultivated land, and paid rent for the same, has a right of occupancy in the land so held, or occupied and cultivated by him, whether held or occupied under a lease or otherwise.

Illustration.

A holds and cultivates lands for eight years and pays rent for the same. In the ninth year the land is diluviated and the site submerged, and A ceases to pay rent Seven years afterwards, land is reformed on the same site. A has not a right of occupancy in the land so reformed.

Explanation 1.—In computing such period of twelve years, the time during which his father or any other person from whom a ryot has inherited, has held or occupied such land, may be added to the time during which the ryot has himself held or occupied; but, in case of a transfer *otherwise than by inheritance* before the completion of the twelve years, *whether with or without the consent of the landlord*, the time during which the transferrer has held or occupied may not be added to the time during which the transferee has held or occupied, *unless such landlord has expressly consented in writing that it shall be so added.*

Explanation 2.—A ryot will not be precluded from acquiring a right of occupancy by the fact that the landlord under whom he has held or occupied for the whole or part of such period of twelve years had no title in the land so held or occupied; or by the fact that such landlord was a coparcener.

Explanation 3.—A right of occupancy may be acquired:—

(*a*) by a person holding or occupying land immediately under, and paying rent directly to, a *mukarraridar* or *istemrardar*;

(*b*) by a person holding or occupying land immediately under, and paying rent directly to, any such tenure-holder or under-tenure-holder as is mentioned in section 11, if such person is not himself an under-tenure-holder, and if, before he was let into possession, no other person has acquired a right of occupancy in the same land under the provisions of this Act, or of Act X of 1859, or of Act VIII of 1869 of the Bengal Council;

(*c*) by a person holding or occupying land immediately under, and paying rent directly to, a ryot having a right of occupancy therein, if such land is held or occupied otherwise than for a term, or year by year;

(*d*) by a person holding or occupying *khamar nijjote*, or *sír* land immediately under, and paying rent directly to, a proprietor, if such land is held or occupied otherwise than for a term, or year by year.

Explanation 4.—A right of occupancy may not be acquired—

(*a*) by a proprietor in land which is a portion of his estate;

(*b*) by any such tenure-holder, as is mentioned in section 6, 7, 8, 9, 10, 11, 12 or 13, in land which is a portion of his tenure;

(*c*) by any such under-tenure-holder as is mentioned in section 6, 7, 8, 9, 10, 11, 12 or 13, in land which is a portion of his under-tenure;

(*d*) by a *mukarraridar* or *istemrardar* in land in which he has a *mukarrari* or *istemrari* interest;

(*e*) by an *ijarahdar* or farmer of rents, in land which is a portion of his *ijarah*: provided that a right of occupancy otherwise duly acquired in land shall not be lost by subsequently holding such land as part of an *ijarah* or farm;

(*f*) by a person holding or occupying land immediately under, and paying rent directly to, a ryot having a right of occupancy therein, if such land is held for a term, or year by year;

(*g*) by a person holding or occupying *khamar nijjote*, or *sír* land immediately under, and paying rent directly to, a proprietor, if such land is held for a term, or year by year.

(*h*) by a tenant, who, when he was first let into possession of land by his landlord, contracted in writing with such landlord that a right of occupancy should not be acquired in such land, if such written contract has been duly registered. No contract shall in any other case debar a tenant from acquiring a right of occupancy.

Legal incidents of a right of occupancy.

20. The following legal incidents shall appertain to every holding in which a right of occupancy has been acquired under this Act or any Act repealed thereby; that is to say,—

Saleable in execution of a decree for arrears of rent only.

(*a*) It shall be saleable in execution of any decree passed for arrears of the rent thereof, but shall not be saleable in execution of any other decree.

It is provided in section 64 that a landlord who has obtained a decree must sell before resorting to any other process of execution. The bidding at the sale is open to all—*See* section 208, para. (1).

Provision for Registration of transfers and successions is made elsewhere—See Chapter VIII, ss. 46—64.

Transferable by sale or gift, and devisable.

(*b*) It may be transferred by private sale or gift, and may be devised by will, and the consent of the landlord shall not be necessary to the validity of any such transfer or devise: provided that no transfer or devise of a portion only of such holding shall be valid as against the landlord without his written consent. *A transfer under this clause is not complete until possession has been obtained by the transferee.*

Heritable according to the law of inheritance of the tenant.

(*c*) It shall be heritable *according to the law of inheritance to which the tenant is subject, but no division of the holding or of the rent shall be made so as to be binding on the landlord without his written consent.* If a ryot who has a right of occupancy in land dies, leaving no heirs and without having made a will, the landlord shall be entitled to take possession of such land.

May not be mortgaged.

(*d*) No ryot having a right of occupancy in land shall be entitled to mortgage such right or such land or any portion thereof, and any such mortgage shall be void to all intents and purposes, nor shall any Court of Justice take cognizance thereof or give effect thereto in any judicial proceeding whatever.

Ryot may not be ejected from land in which he has such right.

(*e*) No ryot may be ejected from land in which he has a right of occupancy, whether for non-payment of rent or other cause *not being a breach of a stipulation in respect of which such ryot and his landlord have contracted in writing that the ryot shall be liable to ejectment for a breach thereof. Any such ryot, who is ejected on account of a breach of any such stipulation, shall be entitled to compensation for improvements under the provisions of sections* 29 *and* 30.

Rent of occupancy ryot payable in kind not to exceed fifty per cent. of the gross produce in the case of staple crops. In the case of other crops, a special contract in writing may be made and enforced; if no such contract, value of twenty-five per cent. of staple crops may be recovered.

21. When the rent payable by a ryot for an occupancy holding is paid in kind, and such ryot does not receive from his landlord seed or labour or other assistance in producing the crop, such rent shall not exceed fifty per centum of the gross produce in the case of any such staple crop as is mentioned in clause (*c*) of section 23. In the case of crops other than such staple crops, if the landlord and tenant have contracted in writing that a certain share of the gross produce shall be paid to the landlord as rent, such contract may be enforced; but, in the absence of any such contract, the landlord shall not be entitled to recover any other or greater rent than twenty-five per centum of the average annual value of the gross produce calculated as provided in clause (*c*) of section 23.

Article 43 of the Digest.

Rent of ryot having a right of occupancy may be enhanced on what grounds.

22. Subject to the other provisions of this Act, a landlord is entitled to enhance the rent payable to him in money by a ryot for land in which such ryot has a right of occupancy. Such rent may be enhanced upon any one or more of the following grounds, *and not otherwise*:—

(1) on the ground that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages *in the vicinity;*

(2) on the ground that the quantity of land held by such ryot has been *shown* by measurement to be greater than the quantity for which rent has been previously paid by him;

(3) on the ground that the productive powers of the land held by such ryot *as compared with such powers at the time when the rent was fixed, or at any subsequent time,* have increased otherwise than by the agency or at the expense of the ryot *and from causes not merely temporary or casual;*

(4) on the ground that the *prices* of produce *in the locality, or at the usual markets, as compared with similar prices at the time when the rent was fixed or at any subsequent time,* have increased otherwise than by the agency or at the expense of the ryot, *and from causes not merely temporary or casual.*

Illustrations.

Of ground (1).

(*a*) *A's* paternal grandfather seventy years ago reclaimed and rendered culturable the land which *A* now holds and cultivates, and which came to him by inheritance from such paternal grandfather. *B* has for fifteen years held and cultivated land which was in a culturable state when *B* was first let into possession thereof. *A* and *B* have such therefore a right of occupancy. There is evidence that the hereditary descendant of a ryot, who being the first settler reclaimed the land, has a special privilege. *A* and *B* are not ryots of the same class.

(*b*) *A* is in possession of a holding which has descended to him from his great-grandfather who held it at the time of the Permanent Settlement. *B* was let into possession of his holding twenty years ago. There is evidence that the descendants of ryots, who were in possession at the time of the Permanent Settlement, customarily hold at rates less by four annas in the rupee than ryots who have come into possession at a later period. *A* and *B* are not ryots of the same class.

(*c*) *A* has acquired a right of occupancy in land which he holds under, and for which he pays rent to, a proprietor. *B* has acquired a right of occupancy under the circumstances mentioned in clause (*c*) of Explanation 3 of section 19. *A* and *B* are not ryots of the same class.

Of ground (2).

(*a*) *A*, a ryot, holds his land at one rupee per bigha and has been paying an annual rent of Rs. 17 as for 17 bighas. A measurement shows that he holds 23 bighas, and the whole of this land is of the same quality. His rent can be enhanced to Rs. 23.

(*b*) *A*, a ryot, has a holding usually described in the *jama-wasil-baki* papers and the ryot's receipts as comprising 27 bigahs, and the rent paid for which is Rs. 33-12. No measurement of this holding has at any time been made, and there is no allegation that its area has been diminished by diluvion; but 15 bighas of land clearly distinguishable are shown by measurement to have been added to the holding by alluvion. This accreted land is of a better quality than any portion of the original holding, and it is shown that two rupees per bigha is the prevailing rate paid by ryots of the same class with *A* for land of a similar description and with similar advantages in the vicinity. *A* is liable to pay Rs. 30 in addition to his former rent of Rs. 33-12.

(*c*) *A* was let into possession of a holding in 1860 under a written lease, which describes the holding as comprising 37 bighas of land and gives the boundaries. The land is situated in a cultivated village, and the boundaries are ascertainable and definite. In 1880 the land within these boundaries is measured and found to be 45 bighas. *A* is not liable to pay enhanced rent in respect of the 8 additional bighas found to be within the boundaries stated in his lease.

As to (*c*) and (*d*) *see* IX, B. L. R., 169: IV, Kent's Commentaries, § 466: II, Smith, L. C. 523: Taylor on Evidence, §§ 11041-105.

(*d*) *A* was let into possession of a holding in 1850 under a written lease, which describes the holding as comprising 50 bighas, more or less, and gives the boundaries. The land is situate in a village which in 1850 consisted chiefly of uncleared *jangal*, and the boundaries are inexact and indefinite. In 1880 *A* is found to be in possession of 200 bighas of cultivated land, to which the description by boundaries is applicable. *A* is liable to enhancement.

XXII, W. R. 246; I. B. L. R. A. C. 21: Hay's Rep. 1863, p. 560.

(*e*) *A* held and cultivated 80 bighas of land at one rupee per bigha from 1863 to 1875. The land so regularly cultivated by him up to 1875 was then bounded on the east by uncleared waste land belonging to *A*'s landlord. In 1876 *A* began to encroach upon this waste land, and in 1880 is found to be, without the acquiescence of his landlord, in possession of 20 bighas of this waste land in addition to the 30 bighas originally held and cultivated by him. *A* landlord may either treat *A* as a trespasser in respect of these 20 bighas, and sue to eject him therefrom and to recover from him mesne profits in respect thereof; or may accept *A* as his tenant for the 20 bighas as an addition to *A* original holding of 30 bighas. In the latter case *A* shall be liable to pay additional or enhanced rent for the 20 bigas of land.

Meaning of term "land lord."

Explanation I.—No person is a "landlord" within the meaning of this section who has not—

New.

(*a*) a permanent transferable interest in the land of which the rent is payable to him: or

New.

(*b*) a farming or leasehold interest in the land of which the rent is payable to him.

Meaning of term "land."

Explanation II.—The term "land" in this section means land used or intended to be used for agriculture, horticulture, pasture, or other similar purpose. When a landlord proceeds upon the fourth ground to enhance the rent of land used or intended to be used for pasture, such rent may be so fixed that the enhanced rate shall bear to the rate then prevailing for arable land in the vicinity the same proportion which the former rate bore to the similar rate prevailing at the time when such former rent was fixed, or at any subsequent time.

New.

Rate fixed by Collector to be deemed a prevailing rate.

Explanation III.—When a table of rates has been prepared and sanctioned in the manner hereafter in this Act, provided any such rate so fixed shall be taken to be a prevailing rate within the meaning of the first ground of enhancement specified in this section.

New.

Landlord entitled to whole increment, when effected solely by his agency or at his expense—otherwise to half only.

23. (*a*.) In any case in which the rent of an occupancy holding is enhanced upon the third or fourth ground specified in section 22, if the increase of the productive powers of the land or of the price of produce has been wholly effected by the agency or at the expense of the landlord, such landlord shall be entitled to the whole of the benefit of such increase. If such increase has taken place otherwise than by the agency or at the expense of the landlord or the ryot, such landlord shall be entitled to one-half of such benefit only.

New.

Limit to enhancement upon the third or fourth ground.

(*b*.) In any case in which the rent of an occupancy holding is enhanced upon the the third or fourth ground specified in section 22, the enhanced rent shall not be more than double the rent previously paid; and shall not bear a higher proportion to such rent previously paid than the increased productive powers or increased prices bear respectively to the former productive powers or the former prices.

Calculation to be based upon a reasonable average of years.

In estimating the increased productive powers or the increased prices, the Court or the Collector shall have regard to such an average of years as under the circumstances may appear reasonable.

Rent enhanced on first, third, or fourth ground not to exceed one-fourth of the average annual value of gross produce, calculated for staple crops.

Board of Revenue to make rules for calculating average value and to determine and notify staples.

(*c*). *In any case in which the rent of a ryot having a right of occupancy is enhanced upon the first, third, or fourth ground specified in section 22, the enhanced rent shall not be more than one-fourth, or, in the case of any such ryot as is mentioned in clause* (c) *of explanation 3 of section 19, three-tenths of the average annual value of the gross produce of the land for which such rent is payable. Such average annual value shall be calculated for staple crops only, and upon the prices at harvest time of a reasonable number of years. The Board of Revenue may from time to time make, and when made, alter, add to, and revoke rules for calculating such average annual value, and shall also determine and notify by an advertisement in the* Calcutta Gazette *what crops shall be deemed to be staple crops, for the purposes of such calculation, in any district or in any area less than a district to be described in such notification. When such staple crops have been so determined and notified for any such district or area, one year's previous notice shall be given of any alterations in such staples.*

Progressive enhancement may be directed.

New.

(*d*.) The Court or the Collector may, if it seems expedient in any case in which enhancement of the rent of an occupancy holding is allowed direct that such enhancement shall be gradual; that is to say, that the rent shall increase yearly by decrees for any number of years not exceeding five until the limit of the enhancement allowed has been reached.

Ryot entitled to a deduction for road cess, &c.

(*e*.) In any case in which the rent of a ryot is found to be liable to enhancement on the fourth ground specified in section 22, if such ryot has been paying an annual sum by way of road cess, public works cess, or the like, the enhanced rent which such ryot shall be otherwise found liable to pay shall be reduced by an amount equal to such annual sum.

Illustrations.

A, a ryot having a right of occupancy, was paying an annual rent of Rs. 8. It is found in enhancement proceedings that this rent can fairly be enhanced on the fourth ground to Rs. 12; but, as *A* was paying four annas annually as road cess, the amount of rent which *A* will be liable to pay in future will be Rs. 12, less 4 annas, or Rs. 11-12.

No enhancement in certain cases of the rent of a ryot having a right of occupancy.

24. The rent of a ryot having a right of occupancy shall not be liable to enhancement (1) when he holds under a written lease for a term certain, which has not expired; (2) *when such ryot and his landlord have contracted that such rent shall not be enhanced.*

Ryot having right of occupancy when entitled to abatement of rent.

25. *Subject to the provisions of clause (a) of section* 105, *of clause* (1) *of section* 111, *and of section* 114, *a* ryot having a right of occupancy is entitled, on any one or more of following grounds and not otherwise, to an abatement of the rent payable by him in money, namely :—

(1) on the ground that the quantity of land held by such ryot has been shown by measurement to be less than the quantity for which rent has been previously paid by him;

(2) on the ground that the productive powers of the land held by such ryot as compared with such powers at the time when the rent was fixed, or at any subsequent time, have decreased from some cause beyond the ryot's control, and not merely temporary or casual;

(3) on the ground that the prices of produce in the locality or at the usual markets, as compared with similar prices at the time when the rent was fixed or at any subsequent time, have decreased from some cause beyond the ryot's control, and not merely temporary or casual.

CHAPTER IV.—OF RYOTS WHO HAVE HELD LAND FOR THREE OR MORE BUT LESS THAN TWELVE YEARS.

Ryot who has cultivated or held land for three years protected from arbitrary eviction.

26. Any ryot, who for a continuous period of three or more, but less than twelve years has as a tenant held, or has as a tenant occupied and cultivated land other than *khamar*, *nijjote* or *sir* land *let on lease for a term or year by year*, shall not be evicted from such land by the landlord thereof otherwise than (*a*) for non-payment of rent, or (*b*) for a breach of some condition of his lease which expressly provides that eviction shall be the penalty of such breach, or (*c*) for refusal to pay an increased rent demanded by his landlord. Such increased rent and the grounds upon which it is demanded shall be specified in a notice which shall be served upon such ryot *(a)* in districts or parts of districts in which the Fusli or Umli year prevails, in or before the month of Jeyt; or *(b)* in districts or parts of districts in which the Bengali year prevails, in or before the month of Pous. Such grounds shall not be limited by any of the provisions of this Act.

Notice of demand of increased rent to be served on ryot.

Any such ryot served with such notice to be liable for the increased rent demanded, if he remains in possession of the land.

27. (*a*) When any such ryot has been served with a notice of demand of increased rent under the provisions of section 26, he shall be liable to pay such increased rent from the first day of the year next ensuing after the service of such notice, if he remains in possession of the land mentioned in such notice after such day.

Any such ryot, if unwilling to pay such increased rent, may relinquish the land.

(*b*) If such ryot is unwilling to pay the increased rent demanded and desires to give up the land mentioned in the notice, he may at any time before the end of the year, in which such notice is served, give notice of relinquishment to his landlord. Such notice of relinquishment shall be served through the Civil Court, and shall, if *such landlord, within the first month of the year next ensuing after service of notice, pays to such ryot or lodges in Court the compensation for disturbance provided by section* 28, determine the tenancy of such land as between them.

Any such ryot so relinquishing his land entitled to one year's increased rent as compensation for disturbance.

28. Any such ryot, who, being unwilling to pay the increased rent demanded for the land held by him, relinquishes such land in the manner stated in clause (*b*) of section 27, shall be entitled to receive as compensation for disturbance a sum equal to the increased rent of one year as demanded in the notice aforesaid. Such ryot, if such sum is not paid to him or lodged in Court as provided in the said clause (*b*), shall be entitled to retain possession of the land at the previous rent, or may at his option sue for such amount in the Civil Court.

New.

Compensation for Improvements.

In the case of a ryot who has held for *twelve years* and has therefore acquired a right of occupancy, no compensation for improvements is ordinarily required, as we have decided that his holding is to be brought to sale in execution of a decree for rent, and the price realized will include the value of the improvements. The ryot will receive the surplus sale-proceeds after the landlord's claims for rent have been satisfied. This is, however, concerned only with the case of non-payment of rent. In the possible case of eviction for breach of a condition of a lease, provision for giving compensation for improvements to a right-of-occupancy ryot has been made in clause *(e)* of section 20.

We have decided not to make any rules for compensation for improvements made by a ryot who has not held for three years.

It remains to deal with ryots who have held for three or more than three years, but less than twelve years; and the text deals with these.

Ryot who has held for three years but less than twelve years, if evicted, entitled to compensation for improvements.

29. A ryot who for a continuous period of three or more but less than twelve years has as a tenant held, or has as a tenant occupied and cultivated land other than *khamar*, *nijjote*, or *sir* land let on lease for a term or year by year, shall, if evicted from such land on any of the grounds mentioned in section 26, or if he relinquishes it under clause (*b*) of section 27, be entitled to receive compensation for any improvements which he may have made on such land at any time while he held or occupied it as aforesaid.

Explanation.—The term "improvements" in this section means works by which the cultivation of land has been lastingly facilitated, or the productive powers of land have been lastingly increased, and includes—

(*a*) the erection of a dwelling-house and offices suitable for the habitation of a cultivating ryot;

(*b*) the making of tanks, wells, and other works for the storage, supply or distribution of water for agricultural purposes;

(*c*) works for the drainage of land, or for the protection of land from floods or from erosion or other damage by water;

(*d*) the reclaiming, clearing or enclosing of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto;

(*f*) the planting of fruit-trees.

Landlord and ryot may agree as to payment of compensation. If they do not agree, Civil Court may decide. Principles of decision.

30. The landlord and the ryot may agree on the amount and mode and time of payment of the compensation mentioned in section 29. If they do not agree, the Civil Court may upon the petition of either of them determine the amount of such compensation, and in so doing shall take into consideration the following principles:—

(*a*) The amount of the ryot's compensation in respect of an improvement shall be the sum laid out by the ryot on the improvement with a deduction of a proportionate part thereof for each year while the tenancy endures after the year of tenancy in which the outlay is made, and while the improvement continues unexhausted.

38 & 39 Vic., Cap. 92, s. 7.

38 & 39 Vic., Cap. 92, s. 11.

(b) In determining the amount of compensation in respect of an improvement there shall be taken into account in reduction thereof any sum reasonably necessary to put the same into good repair or condition.

id. s. 19; and *The Landlord and Tenant (Ireland) Act*, 1870.

(c) Any deterioration of the holding caused by the act of the ryot shall be taken into account.

Decree to be made for amount of compensation.

The Civil Court, having determined the amount of compensation, shall make a decree for the same. *Such decree, if the amount of compensation awarded thereby does not exceed fifty rupees, shall be final and conclusive.*

Three years' ryot may claim abatement, and, if landlord refuse, may relinquish land and claim compensation.

31. Any such ryot as is mentioned in section 26 may, on the grounds mentioned in section 25 or any of them, claim abatement of the rent payable by him in money. If the landlord of such ryot is unwilling to allow the abatement to which such ryot would be so entitled, such ryot may relinquish the land in the manner provided in section 27, and, in this event, he shall be entitled to compensation under the provisions of sections 28, 29 and 30. The compensation recoverable under section 28 in any such case shall be a sum equal to the unabated rent of one year.

CHAPTER V.—OF RYOTS WHO HAVE HELD LAND FOR LESS THAN THREE YEARS.

See Article 50 of the Digest.

Ryot, who has held for less than three years, may be evicted at the will of his landlord, but only through the Court.

32. (1) Subject to the other provisions of this Act, no ryot who has as a tenant held, or has as a tenant occupied and cultivated, land for less than three years, whether under a written agreement or not, shall be entitled by reason of such holding or occupying to retain possession of such land against the will of his landlord: but a ryot, who does not quit of his own accord, shall not be evicted otherwise than by the action of the Civil Court.

See Articles 49 and 52 of the Digest.

Such ryot may not sue for determination of future rent or for abatement.

(2) No ryot, who has as a tenant held, or has as a tenant occupied and cultivated, land for less than three years, may maintain a suit against his landlord—

(a) for the determination of the rent at which he shall be entitled to continue to hold or occupy and cultivate such land; or

(b) for abatement of the rent previously paid by him for such land.

See Article 50 of the Digest.

Any such ryot let into possession otherwise than for a term, or holding over on expiry of term, may not be ejected without notice to quit.

33. (1) When any such ryot as is mentioned in section 32 has been let into possession otherwise than for a term certain, or having been let into possession for a term certain has held over on the expiry of such term with the consent, express or implied, of his landlord, such ryot may not be ejected unless a notice to quit has been served upon him as hereinafter provided.

New.

Notice to quit when to be given, and how to be served.

(2) Such notice to quit shall be in writing and shall be served through the Civil Court (a) in districts or parts of districts in which the Fusli or Umli year

prevails, in or before the month of Jeyt; or (*b*) in districts or parts of districts in which the Bengali year prevails, in or before the month of Pous.

Ryot served with notice to quit as provided in section 33.

New.

34. When a ryot, who in the case mentioned in clause 1 of section 33 has, in accordance with the provisions of Clause 2 of the same section, been served with a notice to quit land, refuses to give up such land from the first day of the year next ensuing after service of such notice; or

or ryot holding after expiry of term of less than three years without landlord's consent,

when a ryot, who has been let into possession of land for a term less than three years, refuses to give up such land upon the expiry of such term and has not the consent, express or implied, of his landlord to hold over,

may be sued and ejected by Court. Period of wrongful holding not to count.

the landlord may, within three months from the expiry of the year in which such notice was served or from the expiry of such term, sue to eject such ryot; and, in any case in which such a suit has been instituted, no time subsequent to the year in which such notice was served or subsequent to the said term shall be taken into account so as to give to any such ryot any benefit which is by this Act given to ryots, who have held, or occupied and cultivated, land for three years or any longer period;

Such ryot when ejected liable for full letting value of the land, and also for damage.

and such landlord, if he obtains a decree for ejectment against such ryot, shall be entitled to recover in execution of such decree the full letting value of the land for such time as he may be kept out of possession after the expiry of such year or such term as aforesaid, together with reasonable compensation for any other damage or loss that may have been caused to him by being so kept out of possession.

Ryot who has held land for less than three years, not liable to pay higher rent, unless there be a written agreement or unless a notice has been served. Notice to state grounds of enhancement.

New.
See North-Western Provinces Rent Act XVIII of 1873, s. 21.

35. (1). No ryot who has as a tenant held, or has as a tenant occupied and cultivated, land for less than three years shall be liable to pay a higher rent than that paid by him for the previous year, unless a written agreement has been entered into by him and his landlord for the payment of such higher rent; or unless a notice demanding such higher rent has been served upon him within the time provided in clause 2 of section 33 for the notice therein mentioned. Such notice shall set forth the grounds upon which such higher rent is claimed, but such grounds shall not be limited by any of the provisions of this Act.

See Article 51 of the Digest.

Such ryot served with such notice may relinquish land. If he do not, he is liable to pay increased rent demanded up to limit of double former rent.

(2). When a notice demanding higher rent has been served upon any such ryot as provided in clause 1, such ryot, if he is unwilling to pay such enhanced rent, may relinquish the land before the first day of the year next ensuing after service of such notice. If he does not so relinquish the land, he shall be liable to pay the increased rent demanded by such notice from such first day of the year next ensuing: provided that he shall not in any case be liable under this rule to pay more than double the former rent.

Article 51 of the Digest.

Explanation.—When any such ryot is served with a notice to quit or pay a specified increased rent, and he elects to remain in possession of the land mentioned in such notice, the tenancy is not thereby determined, and such notice shall be treated as a notice under clause 1.

CHAPTER VI.—OF THE USE OF LAND FOR BUILDING PURPOSES.

Ryot may not use land for building or other purpose inconsistent with use for which it was let.

36. When land used or let to be used for agriculture, horticulture, pasture, or any other similar purpose is held by any such ryot as is mentioned in section 16 or in section 26, such ryot shall not, without the permission of the landlord of such land, use any portion thereof for building or any other purpose inconsistent with that for which it was used or let to be used as aforesaid: provided that a ryot may without such permission erect upon such land a brick-built or other dwelling-house suitable for the use and occupation of himself and his family, together with such out-houses and offices as may be necessary thereto.

Rule does not extend to erection of a suitable residence.

Ryot using land for other purpose may be served with notice of objection.

37. If any such ryot begins to use any such land without the permission of the landlord thereof for building or any other purpose inconsistent with that for which it was used or let to be used as aforesaid, such landlord may serve such ryot through the Civil Court with a notice requiring him to desist from such change of the use of the land, and to restore it to its former condition, if such condition has been altered.

If ryot does not obey notice served in reasonable time, and landlord obtains injunction, ryot disobeying injunction may be ejected.

The draft here supposes the landlord to be on the alert and to keep himself informed of what is going on upon his property. In this case eviction is the penalty, if the ryot pertinaciously continues to do what he has no right to do.

38. In any case in which such notice is served upon such ryot within a reasonable time after he began to change the use of the land, if such ryot fails to comply with the requirements of such notice, and if such landlord having applied to the Civil Court under the provisions of *The Specific Relief Act*, 1877, obtains a mandatory injunction to restrain such ryot from changing the use of the land, and to direct him to restore it to its former condition, where such condition has been altered, then, if such ryot for one month after the date of the decree granting such injunction, or, where such decree has been made *ex parte*, after the date of service upon him of notice of such injunction, fails to obey the same, he shall be liable to be ejected by the Court from the land in respect of which the injunction was granted; he shall also be liable to pay by way of damages such sum as the Court which granted the injunction may find to be necessary to restore the land to its former condition, where such condition has been altered; and he shall not be entitled to compensation in respect of any buildings or works erected or executed upon such land.

If notice not served within reasonable time, and no evidence that landlord was earlier aware of the change of the use of the land, ryot not liable to ejectment, and entitled to compensation for loss from removing buildings, &c.

The draft here supposes the landlord to be negligent in looking after his property, and in consequence not to have given the ryot notice of objection at as early a period as he otherwise might have done had he been diligent.

39. In any case in which such notice is not served upon such ryot within a reasonable time after he began to change the use of the land, if there is no evidence that the landlord was aware thereof for some considerable time before he took steps to have such notice served, and if the

landlord obtains a mandatory injunction as aforesaid, such ryot may be compelled to obey such injunction in any manner provided in that behalf by *The Code of Civil Procedure*, but he shall not be liable to ejectment, and he shall be entitled to receive from his landlord such compensation as the Court which granted the injunction may find to be a reasonable equivalent for any loss sustained by him in consequence of his having to remove any buildings or works erected by him before he received the notice mentioned in section 37.

Landlord being aware and without objection allowing ryot to spend money;

40. If the landlord, being aware that any such ryot has begun to use any such land for building or any other purpose inconsistent with that for which it was used or let to be used as aforesaid, without objection allows such ryot to expend money on such building or other purpose;

or landlord serving no notice of objection for two years,

or, if the landlord fails to serve the ryot with such notice as is mentioned in section 37 within two years after such ryot so began to change the use of the land;

estopped from afterwards objecting to change of use of the land.

such landlord shall be estopped from afterwards objecting to such changed use, and such land shall be deemed to have been let for building or such other purpose to which its use has been altered.

Possession for twelve years of land let for building or other such purpose gives a right of occupancy.

41. (*a*) When land used or let to be used for building or any purpose other than agriculture, horticulture, pasture, or the like, has been in the immediate possession of a tenant, whether under or without a lease, for the full period of twelve years after the commencement of this Act, such tenant shall, in the absence of any contract to the contrary, acquire a right of occupancy in such land, and shall not be liable to be ejected.

Explanation.—The possession of the father or other person from whom the tenant inherits shall be deemed to be the possession of the tenant, within the meaning of this rule for the purpose of acquiring a right of occupancy.

Such interest to be heritable, transferable, and devisable.

(*b*.) The interest of the person who has so acquired a right of occupancy shall be hereitable, transferable, and devisable, and shall be liable to sale in execution of any decree of the Civil Court.

In default of payment of rent, land with buidings, &c., may be sold.

(*c*.) If such tenant makes default in paying the rent of such land, the land together with the buildings or other works thereupon may be brought to sale in execution of a decree for arrears of such rent and shall be subject to the provisions of section 64: provided that any such tenant may be ejected for a breach of any condition of his tenancy for which breach he is liable to ejectment by virtue of a contract between him and his landlord.

Rule for enhancing the rent of land used for building or other such purpose.

Consider procedure to be followed.

42. When a tenant has acquired a right of occupancy in any land under the provisions of section 41, if the rent of such land has not been enhanced during the previous ten years, the landlord thereof shall be entitled from time to time to enhance such rent, so that it may be equal to the rent paid by other tenants for land in the neighbourhood having similar advantages and used

for similar purposes, or so that it may be equal to five per centum per annum of the market value of such land.

CHAPTER VII.—OF MERGER.

Nemo potest esse dominus et tenens.

When same person becomes owner of an estate and a tenure therein, the tenure to be merged in the estate.

43. (*a*.) When by purchase at a private or public sale, by gift, succession, or will, the proprietor of an estate becomes the owner of a tenure in such estate, such tenure shall, unless such proprietor can show that he had a contrary intention, be presumed to be merged in the proprietary interest and to be extinguished by the fact of the same person being owner of the estate and the tenure, subject, however, to the following conditions :—

Kent, vol. IV, p. 108: Woodfall, 281.

(1.) Such person must be owner of the estate and the tenure in the same right and at the same time.

Kent, vol. IV, p. 112.

(2.) The presumption shall not arise in the case of a minor until he becomes of full age, or in the case of a person of unsound mind until he becomes of sound mind.

(3.) Such merger shall not operate to the prejudice of any person having a lien[1] upon such tenure or of any under-tenure-holder or ryot.[2]

8 and 9 Vic., cap. 106, s. 9.

(4.) Subject to the provisions of the law for the time being in force relating to sales of land for arrears of Government revenue, and subject to the provisions of this Act as to sales for arrears of rent without, or in execution of, a decree, such proprietor shall have the same rights and be subject to the same liabilities which the previous holder of such tenure had or was subject to, in respect of those persons between whom and such tenure-holder the relation of landlord and tenant existed :

Proviso.

provided that when, in the case of two or more persons being coparceners, one or more, but not all, of such persons become the owners of a tenure in such estate, no merger shall take place.

Deed declaratory of intention must be registered within three months and published upon land comprised in tenure.

(*b*.) Upon the expiry of three months from the date when such person so became owner of the estate and the tenure, such contrary intention may be proved in the following manner and not otherwise; that is to say, by the production of a deed declaratory of such intention and duly registered within such period of three months, and by proof that a copy of such deed was published in the manner provided in sub-clauses 4 and 5 of clause (*a*) of section 203 for the notification therein mentioned.

Provisions of section 43 to apply to other cases in which the owner of a superior interest acquires an interest immediately inferior.

44. The provisions of section 43, so far as they are applicable, shall apply, *mutatis mutandis*, to a tenure-holder acquiring an under-tenure of the first degree; to an under-tenure

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[1] Kent, vol. IV, pp. 110, 111.

[2] 13 B. L. R., 198.

holder of the first degree acquiring an under-tenure of the second degree; and so on in order; and also to a proprietor, tenure-holder or under-tenure-holder acquiring an occupancy holding, the rent of which was previously payable directly to such proprietor, tenure-holder, or under-tenure-holder.

New.

Proprietary interest merged in paramount title, when an estate is purchased by Secretary of State for India in Council.

45. *It is hereby declared to be, and to have always been, the law in the territories under the administration of the Lieutenant-Governor of Bengal that, when the Secretary of State for India in Council acquires an estate by purchase or otherwise, the proprietary interest in the land included in such estate is merged in the paramount title of such Secretary of State, and extinguished by the fact of such proprietary interest and such paramount title meeting in the same person. The third and fourth conditions mentioned in clause (a) of section* 43 *shall apply to every such estate acquired by the Secretary of State for India in Council. Nothing contained in this section shall be construed to interfere with the operation in any such estate of Act VIII of* 1879 *passed by the Lieutenant-Governor of Bengal in Council, or of any Act for the time being in force for the recovery of public demands.*

Illustration.

An estate named Sultanpur is purchased by the Collector of Burdwan on behalf of the Secretary of State for India in Council at a sale for arrears of land revenue. A, B, and C are ryots holding land included in this estate, and before the sale they paid certain annual sums as rent direct to the proprietor of Sultanpur. After the sale they are liable to pay the same annual sums to the Secretary of State for India in Council, and such sums are so payable not as rent, but as land revenue.

CHAPTER VIII.—OF THE REGISTRATION OF TRANSFERS OF TENURES, UNDER-TENURES, AND OCCUPANCY HOLDINGS.

See Article 25 of the Digest.

Tenant to register transfer of his tenure, under-tenure or holding in his landlord's sarrishta. No division of the rent binding on landlord without his consent in writing.

46. Every succession to, or transfer of, a tenure or under-tenure or any portion thereof, or of an occupancy holding shall within three months after such transfer or succession be registered in the *sarrishta* or Rent-Office of the landlord to whom the rent of such tenure, under-tenure, or occupancy holding is payable; and such landlord shall admit to registry and otherwise give effect to every such transfer or succession: provided that no landlord shall be bound to admit to registry or give effect to any division or distribution of the rent of such tenure, under-tenure, or occupancy holding, nor shall any such division or distribution be valid against such landlord without his consent in writing.

Explanation 1.—The term "transfer" in this section means and includes a transfer by private sale, gift, or exchange, or by sale in execution of a decree.

Explanation 2.—The term "succession" in this section includes devolution by will or by inheritance. In the case of a succession, when there are more heirs than one, all such heirs shall be entitled to have their names registered.

47. In every case of succession to, and transfer of, *a tenure, under-tenure, or occupancy holding,* not being a transfer by sale in execution of a

decree for arrears of its own rent, the landlord thereof is entitled to a fee, which shall be paid upon the registration of such transfer or succession. Such fee shall be two per centum upon the annual rent of such tenure, under-tenure or occupancy holding, provided that no such fee shall be *less than one rupee or more than* one hundred rupees. In default of payment of such fee, such landlord may refuse to register such transfer or succession.

Landlord entitled to fee on transfer of a tenure, under-tenure or occupancy holdings.

See Article 27 of the Digest. Except in the case of patni taluks, the existing law does not provide for a fee upon a transfer or succession.

See Note 5, page 12 of the Digest.

Effect of transfer and of registration of transfer or succession upon liability for rent.

48. (*a.*) In every case of transfer of a tenure under-tenure or occupancy holding, not being a transfer by sale in execution of a decree, the transferrer shall cease to be, and the transferee shall become personally liable for the rent of such tenure, under-tenure or holding from and after the date of application for registery.

(*b.*) In every case of transfer of a tenure, under-tenure or occupancy holding by sale in execution of a decree for arrears of the rent thereof, the transferee shall be personally liable for such rent from and after the date of the confirmation of such sale by the Court. The former tenant shall be personally liable for such rent up to such date.

(*c.*) *In every case of transfer of a tenure or under-tenure by sale in execution of a decree, not being a decree for arrears of the rent thereof, it shall be the duty of the tenant whose interest is so transferred to give notice of such transfer to his landlord. If he gives such notice within a reasonable time, he shall cease to be, and the transferee shall become, personally liable for the rent from the date of the confirmation of the sale. If he omits to give such notice within a reasonable time, he shall remain personally liable for the rent until he gives notice of the transfer.*

(*d.*) In every case of succession to a tenure, under-tenure or occupancy holding, the person succeeding shall *upon taking possession*, be personally liable for such rent from and after the death of the previous tenant.

Consequence of non-registration of transfer other than transfer by sale in execution.

49. If in any case of transfer of a tenure, under-tenure or occupancy holding, not being a transfer by sale in execution of a decree, application for registration of such transfer is not made and the proper fee tendered within three months as provided in section 46, the transferrer shall remain liable for the rent, and the landlord shall not be bound to recognize the transfer. Such landlord shall, however, admit such transfer to registry after the expiry of the said period of three months *upon payment of a fee of twenty per centum if the amount of one year's rent, provided that no such fee shall be less than ten rupees or more than one thousand rupees.*

See Article 29 of the Digest.

Consequence of non-registration of a succession, or of a transfer by execution sale, in case of a tenure or under-tenure.

50. (*a.*) If in any case of succession to a tenure or under-tenure, or in any case of transfer thereof by sale in execution of a decree, application for registration of such succession or transfer is not made *by all or any of the transferrers or successors,* and the proper fee tendered within three months as provided in section 46, the landlord shall be entitled to attach and hold possession of such tenure or under-tenure.

Landlord may collect rents of tenure or under-tenure attached, but a account for balance after deducting his own rent, &c.

(*b.*) After the attachment of such tenure or under-tenure, and until such succession or transfer is registered, such landlord shall be entitled to collect the rents from the under-tenure-holders or ryots, and after deducting therefrom the cost of the attachments, the expenses of collection, and the rent due to himself, he shall hold the balance in trust for the person entitled by succession or by purchase at such sale.

If collections insufficient, person entitled by succession or purchase liable for the deficiency.

(*c.*) If the rents so collected from the under-tenure-holders or ryots are insufficient to discharge the cost of the attachment, the expenses of collection and the rent due to such landlord, the person so entitled by succession or purchase at the execution sale shall be liable for the deficiency, and such landlord may proceed against him for the recovery of the same, subject, however, to the provisions of section 64.

Landlord may after three months admit tenure or under-tenure to registery on payment of fine.

(*d.*) Such landlord shall at any time after the expiry of the said period of three months admit to registry such succession or transfer by execution sale, *upon payment of a fee of twenty per centum of the amonnt of one year's rent, provided that no such fee shall be less than ten rupees or more than one thousand rupees.*

Consequence of non-registration of a succession, or of a transfer by execution sale, in case of a holding.

See section 23 of Mr. Mackenzie's Bill.

51. If in any case of succession to a holding or in any case of transfer thereof by sale in execution of a decree, such succession or transfer is not registered within three months as provided in section 46, *by all or any of the transferees or successors*, the landlord shall be entitled to attach and hold possession of such holding, and may cultivate it or let it for cultivation. Such landlord shall at any time after the expiry of the said period of three months admit to registry such succession or transfer by execution sale, *upon payment of a fee of twenty per centum of the amount of one year's rent, provided that no such fee shall be less than ten rupees or more than one thousand rupees.* If the person entitled by succession or by transfer by an execution sale fails to apply for registration and to tender the proper fee before the expiry of the Fusli or Umli or Bengali year, whichever prevails in his district, next ensuing after such succession or transfer, such holding shall be at the absolute disposal of such landlord.

If landlord fails or refuses to register, civil suit will lie to compel him. Damages may be awarded where pecuniary loss has resulted.

See Digest, page 28, note 4, and Article 28.
For the period of limitation for such suits, see the Third Schedule, Article 18.

52. If a landlord fails or refuses to admit to registry and otherwise give effect to a succession to, or transfer of, a tenure, under-tenure or occupancy holding, in the manner provided in section 46, the transferrer in any case of transfer by private sale, gift, or exchange, or in any case the transferee or successor may sue such landlord in the Civil Court, and if no sufficient grounds are shown why such succession or transfer should not be registered, such Civil Court shall make a decree directing the registry thereof, and may further award damages in any case in which pecuniary loss has resulted from such neglect or refusal to admit to registry and otherwise give effect to such succession or transfer.

Reg. VIII of 1819, s. 5.
Article 27 of the Digest.

Transferee or devisee of patni tenure to give security to the extent of half the yearly rent.

53. (*a.*) In every case in which a patni tenure is transferred by private sale, gift or exchange, or by sale in execution of a decree, the proprietor shall be entitled to demand from the transferee substantial security to the amount of half the yearly rent payable for such tenure, and such proprietor may refuse to register such transfer until such security has been tendered and accepted.

Reg. VIII of 1819, s. 6.
Article 28 of the Digest.

Reg. VIII of 1819, s. 7.
Article 29 of the Digest.

If security be not furnished within one month, proprietor may attach the tenure.

(*b.*) If in any case of a transfer such security be required and be not furnished within three months from the date of such transfer, the proprietor shall be entitled to attach and hold possession of the tenure to the exclusion of the transferee until the said security shall be furnished. The provisions of clauses (*b*) and (*c*) of section 50 shall apply to every such attachment.

Reg. VIII of 1819, s. 6.
Article 28 of the Digest.

Application to District Judge, if security tendered be refused. District Judge may make order. No appeal from such order.

(*c.*) If the security tendered by any transferee is rejected by the proprietor, and such transferee is dissatisfied with such rejection, he may make an application to the District Judge for an order directing such proprietor to receive such security and register such transfer. Such District Judge, if satisfied of the sufficiency of the security tendered, may make such order, or, if not so satisfied, may make an order rejecting such application. No appeal shall lie from any such order.

I. L. R. 1, Calc. 383.

Board of Revenue may prescribe form of register of succession and transfers. Persons concerned entitled to copies of entries on payment of fee of four annas.

54. The Board of Revenue may prescribe for any class of landlords a form in which they shall maintain a register of all successions to, or transfers of tenures, under-tenures and occupancy holdings, the rent of which is payable to such landlords, and, may make, and when made, cancel or alter rules for the maintenance of such register; and may further provide a penalty not exceeding fifty rupees for the breach of any such rule. Every person concerned in any such succession or transfer shall be entitled, upon payment of a fee of four annas, to receive a copy of the entry relating thereto made in such register. Such copy shall be signed by such landlord, or by the person who usually receives the rents on his behalf, and shall be sealed with such landlord's seal, when he commonly uses a seal.

Consider, should this copy be made *primâ facie* evidence of the succession or transfer.

CHAPTER IX.—OF RENT, INSTALMENTS OF RENT, RECEIPTS FOR RENT, DEPOSITS OF RENTS, APPORTIONMENT OF RENT, AND HYPOTHECATION FOR RENT.

Rent of tenure-holder or under-tenure-holder payable in what instalments and upon what dates.

55. (*a.*) Rent payable by a tenure-holder or under-tenure-holder shall be paid upon such dates and in such instalments as are customary or may have been agreed upon between such tenure-holder or under-tenure-holder and his landlord; and in the absence of any such custom or agreement, upon the dates mentioned in clause (*b*) of this section, and in instalments fixed in the manner provided in the same clause.

Consider if this will suit Behar.

Rent of ryots payable in what instalments and on what dates.

(*b*) Rent payable by a ryot shall be paid in four quarterly instalments which shall become due upon the first day of Asarh, the first day of Asin, the first day of Pous, and the first day of Cheit, respectively. When any agreement has been made or any custom has existed before the commencement of this Act regulating the instalments in which such rent is payable,

(a) the amount of the instalment payable on the first day of Asarh shall be the total of the instalments payable according to such agreement or custom in the months Beisakh, Jeyt and Asarh:

(b) the amount of the instalment payable on the first day of Asin shall be the total of the instalments payable according to such agreement or custom in the months Srabun, Bhadro and Asin:

(c) the amount of the instalment payable on the first day of Pous shall be the total of the instalments payable according to such agreement or custom in the months Kartik, Aghun and Pous: and

(d) the amount of the instalment payable on the first day of Cheit shall be the total of the instalments payable according to such agreement or custom in the months Magh, Falgoon and Cheit.

In the absence of any such agreement or custom the portion of the whole rent which shall be paid for each quarterly instalment aforesaid shall be fixed by the Collector after such inquiry as he may deem necessary, and with reference to what he may find to be the most usual practice in the district. Notice of the portion of rent so made payable upon the first day of Asarh, the first day of Asin, the first day of Pous, and the first day of Cheit, respectively, shall be given—

by posting a copy of the Collector's order fixing such instalments at every police station in the district, and in each of the courts or offices of the following officials; that is to say, the District Judge, the Collector, the Magistrate, and all Munsifs, officers in charge of Sub-divisions and Sub-Registrars of Assurances in the district: and

by proclaiming such order by beat of drum at the head-quarters of the district and of every sub-division therein, and in any other places which the Lieutenant-Governor of Bengal may direct.

What to be deemed an arrear of rent. Interest on arrears.

See Article 101 of the Digest.

56. Every instalment of rent not paid or discharged *before sunset* of the day or date upon which it is payable according to the provisions of section 55, shall be deemed to be an arrear of rent, and shall bear interest from such day or date *up to the date of any decree that may be passed therefor* at the rate of twelve per centum per annum; and such interest shall be decreed in every case in which any such arrear is recovered in any Civil Court, *unless the tenant can show that he was prevented by causes beyond his control from paying or discharging such instalment upon the day or date upon which it was payable.*

Receipts for Rent.

Tenant making payment to his landlord entitled to a receipt. What particulars to be inserted in such receipt. Landlord to keep counterpart.

See Article 61 of the Digest and section 34 of Mr. Mackenzie's Bill.

57. (a.) Every tenant who makes a payment to his landlord of rent, *or of any money recoverable as rent*, is entitled to obtain thereupon and without delay a written receipt for the amount paid by him. Such receipt shall specify the date of payment;

the amount paid, or where rent is paid in kind, the quantity of produce delivered; the tenure, under-tenure, holding, or land in respect of which such rent or money is paid, or produce delivered; and the instalment and year on account of which such payment is admitted to have been made. The landlord shall retain a counterpart of such receipt, and similar particulars shall be inserted in such counterpart.

Tenant entitled to statement of account at close of the year. Landlord to keep counterpart.

(*b*) Every tenant shall be entitled to receive from his landlord upon the expiry of the Fusli or Umli or Bengali year, whichever prevails in his district, a statement of account showing the tenure, under-tenure, holding, or land for which such tenant pays rent to such landlord; the annual rent payable therefor; the amount of rent in arear at the beginning of such year; the payments made during the year; the portion of each payment credited to the rent of such year and the portion credited to the arrears of previous years; and the amount, if any, remaining unpaid at the close of such year. The landlord shall retain a counterpart of such statement, and similar particulars shall be inserted in such counterpart.

Landlords to provide themselves with book-forms of such receipts and account statements, and the counterparts thereof.

(*c*) Every landlord shall provide himself with forms of such receipts and statements of account, with the counterparts thereof attached. Such forms shall be bound together in books containing each not less than twenty-five such receipts or statements, which shall be numbered consecutively. Each receipt or statement and the counterpart thereof shall bear the same consecutive number.

Penalty for omitting or refusing to furnish receipt or account statement in form prescribed.

(*d*) Every landlord, who after six months from the commencement of this Act omits or refuses to give to any tenant on demand a receipt or statement of account containing the above particulars shall be liable to the penalty provided by section 88.

Deposit of Rent in the Collectorate.

Tenant may in what cases deposit in the Collectorate his rent which has become due.

58. (1.) Subject to the conditions specified in section 59, a tenant may in any of the cases hereinafter mentioned deposit the rent payable by him in the Collectorate Treasury of the District, or, where there is a Sub-division, in the Treasury of the Sub-division, within which District or Sub-division the tenure, under-tenure, holding, or land for and in respect of which such rent is payable, or any portion thereof is situate; that is to say—

See Article 99 of the Digest.

(*a*) when such rent was duly tendered by such tenant or his agent at the *mal kachari* or other place where such rent was payable, and such rent so tendered was not accepted:

(*b*) when such rent is payable to coparceners jointly, and such tenant was unable to obtain the joint receipt of such coparceners therefor, and no manager has been appointed by them or by the District Judge:

(*c*) when such tenant entertains a *bonâ fide* doubt as to who is entitled to receive such rent.

Public officer may be specially empowered to receive deposits of rent.

(2) *Subject to the conditions and in the cases aforesaid, such rent may also be deposited with any public officer specially empowered by the Lieutenant-Governor of Bengal to receive such deposits of the rents of tenures, under-tenures, holdings, and land situate within a specified area. When a public officer has been so specially empowered, no deposit of the rent of any tenure, under-tenure, holding or land situate within such area shall be received at any Collectorate or Sub-divisional Treasury.*

Conditions on which rent may be deposited.

59. Such deposit of rent shall be subject to the following conditions, that is to say—

(*a*) Such rent shall be deposited, in any case in which a tender has been made, within ten clear days from the *first date on which after such tender the Collectorate or Sub-divisional Treasvry or public office as it may be is open, and in any other case within fifteen clear days from the first date on which after such rent fell due such treasury or public office is open.* When the Collectorate or Sub-divisional treasury or *public office* is closed on the tenth day, the deposit may be made on the day on which such treasury or public office re-opens.

(*b*) Such deposit shall be made by presenting a written application and with such application a written declaration in, or as nearly as possible in, the form A in the second Schedule annexed to this Act. Such declaration shall be made by the tenant, or if he is not personally cognizant of the facts forming the subject-matter thereof, then by a person so personally cognizant.

(*c*) The rent deposited shall be the full amount of rent due by such tenant to such landlord in respect of the tenure, under-tenure, holding or land mentioned in section 58, *and when a tender has been made, of the interest, if any, due at the time of such tender.*

Receipt to be granted under his seal by Treasury or public officer for rent so deposited and to be a valid acquittance.

60. The officer in charge of the Collectorate Treasury or Treasury of the Sub-division *or such public officer as aforesaid* shall receive any deposit of rent made under any of the circumstances specified in section 58 and in compliance with the conditions mentioned in section 59, and shall give a receipt for the same under his official seal. Such receipt shall be and operate as a full acquittance for the rent payable by such tenant and deposited as aforesaid, in the same manner and to the same extent as if such *money had been received.*

(*a*) in case (*a*) of section 58, by the person to whom such rent was tendered;

(*b*) in case (*b*) of section 58 by the coparceners jointly; or

(*c*) in case (*c*) of section 58, by the claimants jointly or by the claimant entitled to the receipt of such rent.

Provision for service of notice is made in a general section applicable to service of all notices—*See* section 159.

Notice of the deposit to be given to the persons entitled, or claiming to be entitled, to the rent :

61. (*a*) The officer in charge of the Collectorate Treasury or the Treasury of the Sub-division *or such public officer as aforesaid* shall *forthwith have posted in a conspicuous place in his office a notification of such deposit, addressed,* according to the purport of the application made by the depositor and the declaration therewith presented, to the person entitled to receive such rent or to the coparaceners or claimants aforesaid. *If no application for payment is made under clause (b) within fifteen days after the posting of such notification, such officer shall within fifteen days after the expiry of the said fifteen days, cause a notice of such deposit to be served upon such person, or coparceners or claimants as aforesaid.*

and rent deposited may upon their application be paid to such persons on their receipt or joint receipt, or receipt of duly appointed agent.

(*b*) Such rent so deposited may, upon an application being made to this effect *and after deducting the cost of serving any notice served under clause* (*a*), be paid (1) to such person entitled to the same, or (2) to such coparceners upon their joint receipt, or, if a common manager be appointed on their behalf by themselves or by the District Judge, to such common manager, or (3) to such claimants upon their joint receipt, or to any of them who has obtained a decree declaring or establishing his title. Any person to whom payment may be made in accordance with these provisions may receive such payment through a duly authorized agent.

Refund to depositor or payment at joint request of him and landlord.

(*c*) If no payment be made under clause (*b*) for a period of three years from the date of such deposit, the amount deposited may be repaid to the depositor upon his application and on his giving back the receipt mentioned in section 60. Such amount may at any time within such period of three years be paid, on the return of such receipt and upon the joint application of the depositor and of the person or persons entitled to payment under clause (*b*) in ay manner requested in such application.

Apportionment of Rent.

Apportionment of rent in what cases

62. When two or more persons become separately entitled to separate portions of an area of land which forms the subject of a separate tenancy, and such portions of such area have been or can be divided by metes and bounds, such persons shall be entitled to have such rent apportioned, and after its apportionment to receive separately the shares of rent apportioned upon such portions respectively.

Apportionment how to be made.

63. Such apportionment may be made by mutual agreement between such persons and the tenant by whom such rent is payable. If such persons and such tenant cannot agree amongst themselves as to the manner in which such apportionment shall be made, the Civil Court may, upon the application of any such persons, or of such tenant, proceed to make such apportionment, and may to this end direct a measurement of the whole or any portion of such land.

Hypothecation for Rent.

64. Every tenure, under-tenure, and occupancy

Every tenure, under-tenure, and holding to be deemed hypothecated for its own rent which shall be a first charge thereupon.

holding shall be deemed to be hypothecated for the rent thereof, and such rent shall be a first charge thereupon. When such rent is in arrear, the landlord shall not be entitled to resort to any other process for the recovery thereof, until he has first brought such tenure, under-tenure, or holding to sale either in a summary manner or in execution of a decree for such rent, as he is by this Act empowered in that behalf.

CHAPTER X.—OF COPARCENERS.

See Article 16 of the Digest.

District Judge may direct coparceners, who disagree, to be served with notice to show cause why they should not appoint a common manager.

65. (1.) When coparceners, who jointly own an estate, tenure or under-tenure, disagree as to the joint management thereof, and in consequence there has ensued or is likely to ensue

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

the District Judge may, upon the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in such estate, tenure or under-tenure, direct a notice to be served upon all such coparceners, calling upon them to show cause why they should not appoint a common manager.

If no cause, or cause not sufficient, is shown, District Judge may make an order directing the appointment of a manager.

(2.) If such coparceners fail to show such cause within *one month* after service of such notice, or if they show cause which in the opinion of the District Judge is not sufficient, such District Judge may make an order directing such coparceners to appoint a common manager. A copy of such order shall be served upon any coparcener who did not appear before it was made.

If such order be not obeyed, District Judge may appoint manager.
Removal of manager so appointed.

66. (1.) If such coparceners do not within *one month* after the making of such order, or, where such order has been so served within *one month* after such service, appoint a common manager and report such appointment for the information of the District Judge, such District Judge may—

(*a*) *direct that such estate, tenure, or under-tenure be managed by the Court of Wards in any case in which such Court of Wards assents to undertake the management thereof: or,*

(*b*) *in any case, appoint a manager, in which event such coparceners shall be bound by such appointment.*

(2.) *The Lieutenant-Governor of Bengal may appoint a person for any district to manage all estates, tenures, and under-tenures to which the provisions of this section apply, and when any such appointment has been made, such person shall be appointed manager under sub-clause* (*b*) *of clause* (1) *by the District Judge.*

"The Court of Wards Act, 1879," to apply to management by Court of Wards.

(3.) *In any case in which the Court of Wards undertakes the management of an estate, tenure or under-tenure under sub-clause* (*a*) *of clause* (1), *so much of the provisions of The Court of Wards Act,* 1879, *as relate to the management of immovable property shall apply to such management.*

Salary of manager. Manager to give security. Powers of manager. Duty to keep accounts. Removal.

67. In any case in which a manager is appointed under sub-clause (*b*) of clause (1) of section 66, the District Judge *may settle and from time to time alter the remuneration of such manager, which may be a fixed salary or a percentage of the monies collected by him as manager.* Such manager shall give such security for the proper discharge of his duties as to the District Judge shall appear reasonable and sufficient. For the purposes of management he shall have and be entitled to exercise the same powers which the coparceners jointly might but for his appointment have exercised. He shall keep regular accounts, and shall allow the coparceners or any of them to inspect and take copies of such accounts. He shall be removable by the order of the District Judge and not otherwise, and may be removed upon the application of the Collector, or any person interested in the estate, tenure, or under-tenure.

Management may be restored to coparceners, if prepared to conduct it properly.

68. The District Judge may at any time direct that the management be restored to the coparceners, if he is satisfied that such management will be conducted by them jointly without inconvenience to the public or injury to private rights.

See Article 60 of the Digest.

Rent to be paid to coparceners on their joint receipt or on that of a manager. One coparcener may not sue for his share of rent separately.

69. Except in the cases hereinafter excepted, rent payable to coparceners shall be paid upon the joint receipt of all such coparceners, or, where a manager has been appointed by them or by the District Judge, upon the receipt of such manager; and all such coparceners must be made parties to any suit brought for the recovery of arrears of any such rent. Any such suit brought by one or more coparceners and not by all, or to which all have not been made parties* shall be dismissed with costs.

Exception 1—where tenant has contracted to pay a share of the rent separately.

Exception 1.—When an agreement has been made between a tenant and one or more of several coparceners with the consent of the other or others of them that the share of rent to which such one or more coparceners is or are entitled shall be paid directly to him or them, such share of rent shall be so payable and recoverable.

Exception 2—where tenant has been in the habit of paying a share of the rent separately.

Exception 2.—When a tenant has usually paid to one or more of several coparceners, without objection from the other or others of them, the share of rent to which such one or more coparceners is or are entitled, such share of rent shall be so payable and recoverable.

Exception 3—where coparcener cannot get his share of rent in consequence of collusion.

Exception 3.—When a coparcener is unable to obtain his share of the rent payable by a tenant in consequence of collusion between such tenant and the other coparceners, he may sue to recover his share of rent separately, and shall in such suit make such other coparceners defendants.

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* The practice in India is to make *pro formâ* defendants those persons who have co-existent rights with the plaintiff to sue, but who refuse to join as plaintiffs, the fact of this refusal being stated in the plaint. As to the practice in courts of equity in England, which has not been materially altered by the Rules under the Judicature Act, see *Daniell's Chancery Practice*, Vol. I, pp. 172, 186; see sections 26 and 30 of *The Code of Civil Procedure*, and consider "with the permission of the Court" in the latter section.

One coparcener may not bring tenure to summary sale, or measure the lands, or enhance the rents of the tenants.

70. A coparcener may not, otherwise than conjointly with his other coparceners or through a manager appointed by all the coparceners or by the District Judge, bring a tenure to summary sale under the provisions of Chapter XVI, or measure lands in the possession or occupation of the tenants of such coparceners, or enhance the rents of such tenants, or, where a suit is necessary to effect such measurement or enhancement, maintain such suit without making such other coparceners parties thereto.

CHAPTER XI.—OF SOME MISCELLANEOUS RIGHTS OF LANDLORDS AND TENANTS.

Proprietors competent to grant leases for any Period in any form and at any rent.

71. Proprietors are competent to grant leases for any period even to perpetuity, and in any form and at any rent most convenient to the contracting parties and most conducive to their respective interests, of land which was not at the time of the Permanent Settlement held by tenure-holders, under-tenure-holders or ryots, or which being so held has since that time come into the *khas* or actual possession of such proprietors, subject, however, to the other provisions of this Act and to the following conditions, and not otherwise :—

Conditions.

(1) All engagements contracted with tenants shall be specific as to the conditions thereof and as to the amount of rent reserved.

(2) All impositions upon the tenants under the denomination of *abwab mahtut* and other appellations *in additian* to the actual rent *shall be deemed illegal and shall subject the person imposing them to the penalty provided by section* 87 ; and all stipulations and reservations for the payment of such shall be null and void.

(3) No person contracting with a proprietor or employed by him in the management of the collections shall take charge of the lands or collections without written authority signed by such proprietor.

A proprietor may make a grant of land free of rent, but such grant shall be binding only upon the grantor or his heirs or any person claiming through him or them.

72. A landlord may not—

Landlord may not impose abwabs on his tenants ;

(*a*) under any pretence whatever, impose on his tenants any new cess or other payment not taken into account in fixing the Government revenue, or not sanctioned by law or by ancient custom approved by the revenue authorities ;

or compel the attendance of his tenants, or enforce payment of rent otherwise than according to law.

(*b*) or compel the attendance of his tenants for the adjustment of their rents or for any other purpose ; or adopt any means of compulsion for enforcing payment of rent other than the means provided by this Act.

Landlord bound to put and maintain tenant in possession.

73. A landlord is bound to maintain his tenant in the peaceable and quiet possession and enjoyment of the tenure, under-tenure, holding or land in respect of which the relation of landlord and tenant exists between them, so long as such relation exists. This duty extends only to interruption or disturbance by the landlord or any one claiming under or paramount to him. It does not extend to interruption or disturbance by third parties.

In the case of a new letting the landlord is bound, upon the tenant's request, to put him in possession of the property demised.

Lease may not be granted for term exceeding lessor's interest.

74. A person having an interest in land, is not competent to grant a valid lease of such land for a term exceeding his own interest.

Lease for term exceeding lessor's interest valid to the extent of such interest and voidable as to excess merely.

When a lease has been granted for a term exceeding the lessor's interest, such lease is valid to the extent of such interest and is voidable only as to the excess: provided that, if such lessor after granting such lease acquire such excess such lease shall be valid for such excess between such lessor and such lessee and persons claiming under them or either of them respectively.

Lease granted by person having no interest valid to extent of interest subsequently acquired.

If a person grants a lease of land in which he has no interest to a lessee who obtains possession of such land under such lease, and if such person afterwards acquires an interest in such land, such lease shall be valid to the extent of such after-acquired interest between such lessor and such lessee and persons claiming under them or either of them respectively.

Landlord entitled to make general survey and measurement, unless restrained by contract.

75. Subject to the provisions of section 70 and if not restrained from so doing by express engagement with the occupants of the land, a landlord is entitled to make a general survey and measurement of all land comprised in any estate, tenure, under-tenure or holding, of the rents of which he is in receipt, and is further entitled to enter upon such land for the purpose of making such survey and measurement.

Illustrations.

(*a*)—A, a proprietor, grants a portion of his estate in patni, to B, the patni rent payable to A being fixed at Rs. 500. The ryots, as a necessary consequence, pay their rents to B. Both A and B are entitled to make a general survey and measurement of the lands comprised in the patni lease.

(*b*)—A is the proprietor of an estate. B holds lakheraj land situated within the local limits of A's estate. A is not entitled to measure B's lakheraj land.

Measurement in suits between landlords and tenants to be made according to Government standard of measurement.

76. (*a*.) In any case in which a measurement of land is made by order of a Civil Court or of a Collector in any suit between landlord and tenant, such measurement shall be made according to the Government measure of 14,400 square feet to one standard bigha. If the rights of the parties to such suit are regulated by any different local measure depending upon a standard pole of the pergunnah in which the land is situate, the

Conversion into local measure, when necessary.

Government measure shall be converted into such local measure for the purposes of such suit.

Determination of the length of the standard pole in case of dispute.

(*b*.) If any dispute as to the length of such standard pole arises in any suit under this Act, the Collector shall in any suit before himself, or in any suit before a Civil Court on a reference made for this purpose by such Civil Court, determine the proper length thereof. An appeal shall lie from the Collector's decision to the District Judge. If no such appeal be preferred, the decision of the Collector shall be final and conclusive.

Tenant may not permanently alter condition of the land. Proviso as to improvements.

77. (*a*.) A tenant is bound to use the land which he holds as tenant in a reasonable manner for the purpose for which it was let or has been customarily used. A ryot may not without the consent of his landlord materially alter the condition of the land held by him, so as to render it *permanently* unfit for agricultural or horticultural purposes: provided that any ryot may without such consent make any of the improvements mentioned in section 29.

Ryot entitled to cut trees planted by himself or his predecessor in title.

(*b*) A ryot is entitled, *any custom to the contrary notwithstanding*, to cut down and appropriate trees on his holding planted by himself or by any ryot from whom such holding was derived by public or private sale, gift, devise, or inheritance.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.

78. No tenant shall, in any case in which his landlord's interest has been transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless such transferee has given notice of the transfer to such tenant.

Relation of landlord and tenant in what cases determined by what occurrences.

79. Subject to the other provisions of this Act, a tenancy is determined as between the parties thereto by any of the following occurrences in the following cases respectively, that is to say—

By expiry of term—exception.

(1) in the case of a lease for a term—by the expiry of such term, unless the tenant holds over without objection made by the landlord, or unless the tenant has a right to the possession of the land otherwise than by virtue of the lease:

By determination of landlord's limited interest.

Exception.

(2) in the case of a lease by a landlord whose interest is for a limited time only and who has no power to create a tenancy extending beyond the period of such interest—by the expiry of the term of such interest and the determination of such landlord's possession, unless the tenant has a right to the possession of the land otherwise than by virtue of the lease:

(3) in the case of a ryot holding otherwise than under a lease for a definite term—by relinquishing the whole of the land held or cultivated by him as one

By relinquishment of land by ryot after notice given.

holding: provided he has given notice of his intention in writing to the person entitled to the rent of such land or to his authorized agent—in districts or parts of districts where the Fusli or Umli year prevails, in or before the month of Jeyt—and in districts or parts of districts where the Bengali year prevails, in or before the month of Poos—of the year preceding that in which the relinquishment is to have effect.

If such ryot has not given such notice and the land is not let to any other person, he shall continue liable for the rent of such land.

If the person entitled to such rent, or his agent, refuses to receive such notice, and to sign a receipt for the same, such ryot may make an application to the Court within the jurisdiction of which the lands or any portion of them are situate, and such Court shall thereupon cause the notice to be served on such person or his agent:

By abandonment.

(4) in the case of a non-transferable holding—by abandonment, when the tenant, having ceased to cultivate the land or pay rent therefor, has been absent from the neighbourhood for a year, and the landlord elects to treat the tenancy as determined:

By ejectment of ryot for non-payment of rent.

(5) in the case of a non-transferable holding for which an arrear of rent is due at the end of the Bengali year or at the end of the month of Jeyt of the Fusli or Umli or Willayutti year—by ejectment from the land in respect of which such arrear is due.

No ryot shall be ejected otherwise than in execution of a decree or order of the Civil Court. The right to eject for non-payment of the rent of any one year shall be deemed to have been waived by the receipt of rent for a subsequent year:

By ejectment of farmer or lease-holder for non-payment of rent.

(6) in the case of a farmer or other lease-holder not having a permanent or transferable interest in the land, when an arrear of rent is due and unpaid—by cancelment of the lease and ejectment of the lease-holder.

No such lease shall be cancelled and no such lease-holder shall be ejected otherwise than in execution of a decree or order of the Civil Court:

By notice to quit in certain cases.

(7) in the case of a ryot not having a right of occupancy and not being such a ryot as is mentioned in section 26, or of a tenant for a term holding over after the expiry of his term with the express or implied consent of his landlord—by a notice to quit as provided in section 33

Explanation—The institution of a suit for ejectment is not equivalent to a notice to quit.

By disclaimer when a tenant disclaims his landlord's title and sets up an adverse title.

(8) in the case of any tenant—by disclaimer when in a suit to which his landlord is a party the tenant disclaims such landlord's title and sets up an adverse title in himself or another by matter in writing or reduced to writing by the Court under the provisions of this Act or of *The Code of Civil Procedure,* and such landlord elects within six months to treat such disclaimer as a forfeiture of the tenancy:

provided that no such forfeiture by disclaimer shall be allowed in any case in which such tenant having been let into possession by such landlord can show that such landlord's title had expired or been defeated or annulled at the time at which such disclaimer was made: or, not having been let into possession by such landlord, can show that he admitted his title as landlord under a *boná fide* misapprehension or mistake.

Illustration.

B. having taken from A, a proprietor, an *ijarah* of an estate from the 1st Beisakh 1271 to the last day of Cheit 1288 B. S., lets twenty bighas of land, situate in such estate, to C, a ryot in 1272, and puts C in possession. The term of the *ijarah* being about to expire. A in Cheit 1288 gives notice to C not to pay to B any of the rent for 1289. B sues C for the first instalment of the rent of 1289, and C in this suit denies B's title as landlord. B, having subsequently obtained from A a ten years' extension of the *ijarah*, seeks to eject C for so denying his title. C having shown the above facts, is not liable to be ejected.

By sale for arrears of revenue or rent when purchaser elects to determine.

(9) when the landlord's estate, tenure or under-tenure is sold for arrears of revenue or rent under any law for the time being in force which entitles the purchaser of such estate, tenure, or under-tenure to avoid a lease or determine a tenancy, and such purchaser elects to avoid such lease or determine such tenancy.

Mere non-payment of rent does not determine relation of landlord and tenant.

Explanation.—When the relation of landlord and tenant exists between two persons in respect of any property, the non-payment of rent for such property by such tenant to such landlord shall not of itself determine such relation.

Ryot ejected from land entitled to the away-going crops, and to enter on land to remove them.

See Section 32.

80. When a ryot is ejected in execution of a decree from land upon which there are, at the time of such ejectment, growing crops or other ungathered products of the earth, which such ryot, but for such ejectment, would have been entitled to reap or gather, such ryot shall notwithstanding such ejectment, be entitled to reap or gather such crops or products, and may use the land for the purpose of tending, reaping, gathering, and removing the same; and in the event of his so doing he shall be liable to pay a reasonable rent for the time during which he uses the land as aforesaid:

Landlord may, if he wishes, purchase such crops or products at a valuation to be made by Court in case of dispute.

provided that the landlord may purchase such crops or products at a fair valuation if, when he applies for execution of his decree, he gives notice of his intention to do so. In any case in which the landlord and the ryot cannot agree as to such valuation, the Court may, upon the application of either of them, determine the value of such crops or products, and the order so determining such value shall have the force of a decree.

CHAPTER XII.—OF SPECIAL PROVISION FOR BEHAR.

Ryot has right of occupancy in land held for three years, if he held any land in same estate for twelve years previously.

81. Every ryot, who on the day of is in occupation of land other than *zerat* land, and has occupied the same continuously for the three years next preceding such date, has a right of occupancy in such land which he has so occupied for three years continuously, if, during each of the twelve years next preceding such aforesaid date, he has occupied any land other than *zerat* land in the estate which such first-mentioned land is included, or in any estate, which with such estate at any previous time formed a single estate.

Explanation.—"*Zerat*" land is land the cultivation of which has been carried on for twelve years continuously, wholly on behalf of the proprietor and at his sole risk, with his own stock, or by his servants or by hired labourers, or partly by some and partly by others of these persons.

Ryot to have right of occupancy in land received in exchange from his landlord for land in which he had a right of occupancy.

82. When the whole or any portion of the land in which a ryot has a right of occupancy is given by him with his consent to his landlord in exchange for other land, forming a portion of the same estate, tenure, or under-tenure, such ryot shall have a right of occupancy in the land received by him in exchange therefor.

Rent payable in kind not to exceed half the gross produce, and in the absence of any express stipulation to be half the gross produce.

83. When rent is payable by delivering to the landlord a certain proportion of the actual gross produce, such proportion shall in no case exceed one-half, and in any case in which there is no written agreement specifying a different proportion, shall be presumed to be one-half.

When rent is payable in kind or in money value of a portion of the crop, landlord or tenant may, in case of dispute, petition Collector to depute an officer to make an award.

84. (*a.*) When rent is payable by delivering a certain proportion of the actual gross produce of the land, or by paying the equivalent money value thereof determined by an estimate or appraisement of the standing crop, or by some similar proceeding, and in order to settle the quantity of produce to be delivered, or determine the equivalent money-value to be paid, it is necessary that both parties—that is to say, the landlord and the tenant—should be present together upon the land either in person or by agent, then, if such parties cannot amicably arrange to be present together upon the land for such purpose as aforesaid, or if any dispute arises between such parties as to the settlement of the

quantity of produce to be delivered or as to determining the equivalent money-value to be paid, in any such case either of such parties may make an application to the Collector of the district that a proper officer may be deputed to settle the quantity of produce or determine the equivalent money-value aforesaid, and to make an award accordingly.

Collector to depute an officer, whose award shall be binding, unless set aside by the Civil Court.

(*b*.) The Collector shall, upon any such application being made to him, depute a proper officer for such purpose. Such officer shall give to both parties reasonable notice of the time and place at which he intends to proceed to make his award, and shall at such time and place proceed to make such award accordingly, and may direct the costs thereof to be paid by the party whom he finds to be in the wrong. If either party, having received notice, fails to attend, he shall nevertheless be bound by the award made in his absence. The award when made may be acted upon at once. Either party, if dissatisfied, may institute a suit in the Civil Court to set aside such award. If no such suit is instituted, such award shall be final.

Danabundi or appraisement papers to be deposited in the Collector's office within fifteen days after the appraisement.

85. When the rent payable for land is the equivalent money-value of a fixed proportion of the actual gross produce thereof, and such equivalent money-value is determined by an estimate or appraisement (*danabandi*) of the standing crop or by some similar proceeding, the *danabandi* or appraisement papers shall, within fifteen days after the making of the appraisement, be lodged in the office of the Collector of the district.

Ryot or landlord entitled to have rent, payable in kind or in equivalent value of share of gross produce, commuted to an annual money-rent. Principle upon which such commutation should be made. Procedure for making.

86. Every ryot having a right of occupancy or the landlord of such ryot shall be entitled to have rent payable in the manner mentioned in section 84 commuted into an annual money-rent payable without direct reference to the crops produced at each harvest, but liable to enhancement under the provisions of this Act.* Such annual money-rent shall be fixed according to the prevailing money-rent payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity, or, if no such prevailing rate obtains in the vicinity, then according to the average value of the landlord's share of the actual gross produce for the preceding five years, a reasonable deduction being made therefrom in consideration of the whole risk of cultivation being taken by the ryot.

The provisions of Chapter XV as to proceedings before the Collector shall, so far as they are relevant, be applicable to the settlement of annual money-rents under this section.

CHAPTER XIII.—OF DAMAGES AND PENALTIES.

Damages for exaction by landlord from tenant of sum in excess of the rent payable.

87. Every tenant, from whom any sum of money or any portion of the produce of his land is illegally exacted by his landlord in excess of the rent lawfully payable by such tenant, shall be entitled to recover from such landlord such sum so exacted together with damages not exceeding double such sum.

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* In effecting this commutation we get a corn rent—a rent reserved in produce,—and it would be easy to arrange for future enhancement of the commuted money-rent by declaring that after ten years such money-rent may be enhanced to the average price during these ten years of the same amount of produce.

See section 57, clause (*d*).

Damages recoverable for withholding receipts for rent.

88. Every tenant, from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so paid.

Damages for extorting payment of rent by duress.

89. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, such tenant shall be entitled to recover such damages as may be deemed a reasonable compensation for the injury done him by such extortion. An award of compensation under this section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law.

The Court may award damages not exceeding 25 per cent. on rent not paid without reasonable or probable cause.

90. If in any suit brought for the recovery of arrears of rent, it shall appear to the Court, that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, and that he has not, on or before the date upon which such rent was payable according to the provisions of section 55, tendered such amount to the plaintiff or his duly authorized agent, or in case of the refusal of the plaintiff or such agent to receive the amount so tendered, has not before the institution of the suit deposited such amount in the Collectorate as provided in section 58, it shall be lawful for the Court to award to such plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed as such Court may think fit. Such damages, when awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of six per centum per annum from the date of decree until payment on realisation thereof.

Explanation.—The Court may not give, in addition to damages, interest before decree upon the rent decreed.

The Court may award compensation not exceeding 25 per cent. on amount claimed to defendant improperly sued for rent.

91. If in any suit brought for the recovery of arrears of rent, it shall appear to the Court that the plaintiff has instituted such suit against the defendant without reasonable or probable cause, or that the defendant had duly deposited in the Collectorate, in accordance with the provisions of section 58, the full amount which the Court shall find to have been due to the plaintiff on the date of such deposit, it shall be lawful for such Court to award to the defendant, by way of compensation, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as such Court may think fit, and such sum, with interest at the rate of twelve per centum per annum until payment or realization thereof, shall be recoverable from the plaintiff in like manner as sums ordered to be paid by decrees of such Court.

CHAPTER XIV.—OF LIMITATION.

See Articles 76, 77, 78 and 79 of the Digest; and section 4 of *The Indian Limitation* Act, XV of 1877.

Suits and applications in Third Schedule to be instituted and made within the time there prescribed: otherwise to be dismissed.

92. Subject to the provisions of section 93 the suits, appeals, and applications specified in the Third Schedule annexed to this Act shall be instituted and made within the time prescribed in such schedule for

each of them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed shall be dismissed, although limitation has not been pleaded.

Portions of the Indian Limitation Act applicable to such suits and applications.

93. The following portions of the Indian Limitation Act, 1877, shall apply to the suits, appeals and applications mentioned in section 92; that is to say, of Part II, the Explanation to section 4 and section 5; and the whole of Part III.

See Digest, page 56, foot-note 6, and 4 Cal. L. R. 371.

Computation of time where, until termination of litigation as to their mutual rights, landlord could not previously have sued tenant for rent.

94. When the result of litigation between any persons is such that they stand in the relation of landlord and tenant to each other and have stood in this relation while such litigation was pending, but, until their mutual rights were finally determined by such litigation, such landlord was unable to sue such tenant for rent, the period of limitation for suing for any such rent shall be computed from the termination of such litigation.

See Explanation to Article 78 of the Digest and the cases noted opposite thereto.

PART II.

THE PROCEDURE IN SUITS BETWEEN LANDLORDS AND TENANTS.

CHAPTER XV.—OF PROCEEDINGS TO ENHANCE THE RENT PAYABLE IN MONEY BY RYOTS HAVING A RIGHT OF OCCUPANCY, OR BY TENURE-HOLDERS OR UNDER-TENURE-HOLDERS.

Landlord having permanent transferable interest, to proceed before what tribunal for enhancement of rent.

95. (*a.*) A landlord who has a permanent transfereable interest in land held by a ryot having a right of occupancy therein may, at his option and as in this Chapter hereafter provided, proceed in the Civil Court or before the Collector to enhance the rent of such ryot upon any one or more of the first three of the grounds specified in section 22, and may proceed before the Collector only to enhance such rent upon the fourth of such grounds.

Landlord having a farming or lease-hold interest, to proceed before what tribunal for enhancement of rent.

(*b.*) A landlord, who has a farming or lease-hold interest in land held by a ryot having a right of occupancy therein may proceed in the Civil Court, as in this Chapter hereafter provided, to enhance the rent of such ryot upon any one or more of the first three of the grounds specified in section 22; and, if a period of not less than ten years of such interest remains unexpired, but not otherwise, he may proceed before the Collector to enhance such rent upon the third and fourth of such grounds or either of them.

I.—*Proceedings in the Civil Courts.*

Enhancement proceedings in the Civil Court to be commenced by plaint. Such plaint when to be filed if intended to affect the rent of the following year.

96. A landlord intending to proceed in the Civil Court to enhance the rent of a ryot having a right of occupancy upon any one or more of the first, second or third grounds specified in section 22, shall present a plaint to such Court or such officer as it appoints in this behalf. Such plaint shall, in order to affect the rent of the following year, be pre-

This procedure does away with the notice of enhancement and all the difficulties and technicalities connected therewith.

sented (*a*) in districts or parts of districts in which the Fusli or Umli year prevails, in or before the month of Baisakh; or (*b*) in districts or parts of districts in which the Bengali year prevails, in or before the month of Aughan.

Plaint to set forth the grounds of enhancement.

97. Such plaint shall set forth the ground or grounds specified in section 22, upon which enhancement is claimed in respect of each holding mentioned therein.

Particulars to be given when enhancement is claimed on the *first* ground.

(1.) When enhancement is claimed on the first of such grounds, the plaint shall further state—

(*a*) the quantity of land held by the ryot, and, when such land consists of different classes, the quantity of each class;

(*b*) the rate of rent actually paid for such land or each class of such land; and

(*c*) the alleged prevailing rate which the plaintiff claims instead of the rate actually paid.

Particulars to be given when enhancement is claimed on the *second* ground.

(2.) When enhancement is claimed on the second of such grounds, the plaint shall further state—

(*a*) the quantity of land for which rent was previously paid by the ryot, and, when such land consists of different classes, the quantity of each class;

(*b*) the amount of rent paid for such land and the rate or rates at which such rent was calculated for each class;

(*c*) the quantity of land in excess of that specified under (*a*) for which the plaintiff claims to receive additional rent;

(*d*) the amount of additional rent claimed for the land specified under (*c*); and

(*e*) the total rent claimed, that is to say, the total of (*b*) and (*d*).

Particulars to be given when enhancement is claimed on the *third* ground.

(3.) When enhancement is claimed on the third of such grounds, the plaint shall further state—

(*a*) the quantity of land held by the ryot, and when such land consists of different classes, the quantity of each class;

(*b*) the amount of rent previously paid for such land, and the rate or rates at which such rent was calculated;

(*c*) the cause and extent of the alleged increase in the productive powers of the land; and

(*d*) the enhanced rent or rates of rent which the plaintiff claims to receive in consequence of such increase.

The provisions of the Code of Civil Procedure to apply to suits for enhancement brought in the Civil Courts.

98. (*a*.) The Civil Court to which any such plaint has been presented shall proceed to deal therewith in accordance with the provisions of *The Code of Civil Procedure*, and all the proceedings of such Court in the suit, so instituted by the presentation of such plaint, shall be governed by the provisions of the said Code.

Civil Courts to decide all questions fairly raised between the parties.

(*b*.) Such Court shall have full power to decide upon the landlord's right to enhance and upon the fairness of the enhanced rent demanded, and may declare to the landlord entitled to such enhanced rent or to any less rent which may be found to be fair and equitable, and shall decide all question directly raised between the parties so as to avoid, as far as may be possible, a multiplicity of suits. In any case in which the Court decrees enhancement of rent, such enhancement shall take effect from the commencement of the Fusli or Umli or Bengali year following that in which the plaint was presented to the Court.

Illustrations.

(*a*) *A* sues to enhance the rent of *B*, a ryot having a right of occupancy, on the first of the grounds specified in section 22, alleging that *B* holds 20 bighas of land at one rupee per bigha and pays a rent of Rs. 20; that the prevailing rate, payable by the class of ryots to which *B* belongs for land of a similar description and with similar advantages in the vicinity, is one rupee and eight annas per bigha; and therefore that *B's* rent should be enhanced to Rs. 30. *B* pleads that he holds 15 bighas only, and denies that such prevailing rate is more than the one rupee per bigha which he pays. *A* fails to prove that the prevailing rate is one rupee and eight annas. The Court shall nevertheless decide whether *B* holds 15 or 20 bighas, and whether his rent is Rs. 15 or Rs. 20.

(*b*) *A* sues to enhance the rent of *B*, a ryot having a right of occupancy, on the second of the grounds specified in section 22, alleging that *B* previously held ten bighas of land at one rupee and eight annas per bigha, that eight more bighas have been recently added by alluvion to *B's* holding; and that *B* should pay a rent of Rs. 27 instead of Rs. 15 which he previously paid. *B* denies that any land has been added to his holding by alluvion, and alleges that he previously held not ten, but fifteen bighas, and that the rate of rent was one rupee, not one rupee and eight annas. There is no satisfactory evidence of alluvion. The Court shall nevertheless try whether *B* previously held ten or fifteen bighas, and whether the rate of rent was one rupee or one rupee and eight annas.

(*c*) *A* sues to enhance the rent of *B*, a ryot having a right of occupancy, on the ground that the productive powers of the land held by *B* have increased otherwise than by the agency or at the expense of *B* in consequence of the construction by Government of a canal which has drained and improved *B's* land. *B* denies that the productive powers of his land have increased, and alleges that his land is not liable to enhancement as it is held at a rate which has not been changed since the time of the Permanent Settlement. *A* fails to prove the alleged increase of the productive powers of the land. The Court shall nevertheless try whether *B's* land is held at a rate of rent which has not been changed since the time of the Permanent Settlement, and so is protected from enhancement.

II.—*Proceedings before the Collector.*

Application may be made to Collector for enhancement or settlement of rents.

99. A landlord, who intends to proceed before the Collector to enhance the rent of ryots having a right of occupancy or any one or more of the four grounds specified in section 22, or who in the case mentioned in section 112 desires to ascertain the particulars therein mentioned, shall make an application for this purpose to the Collector of the district, in which are situate the lands, or any portion of the lands, to the rent of which he is entitled.

Jurisdiction where lands situate in two or more districts.

When the lands are situate in two or more districts included in the division of the same Commissioner, such Commissioner, and when the lands are situate in two or more districts not included in the division of the same Commissioner, the Board of Revenue may, for any reason which appears sufficient, direct that such application be transferred to any other Collector within whose Collectorate any portion of such lands is situate; and such latter Collector shall in any such case have power to proceed as if such application had in the first instance been made to himself.

A landlord who has made an application under this section is in this Chapter hereafter termed *The Applicant.* The provisions of section 163 as to the signature and verification of a plaint shall be applicable to every such application.

Applicant may ask for—
(1) a table of rates; or
(2) an enhanced jamabandi; or
(3) a settlement jamabandi.

100. The Applicant may in his application pray that the Collector shall prepare for the estate, tenure or under-tenure, in respect of which the application is made (1) a *table of rates*, or (2) an *enhanced jamabandi*, or (3) a *settlement jamabandi*.

Meaning of a "Table of Rates."

A "Table of Rates" means a table or schedule which exhibits the classes of land in an estate, tenure or under-tenure, according to the classification usual in the locality, and the rates of rent payable for each class. When enhancement is claimed on the first and second of the grounds specified in section 22, such table shall exhibit the prevailing rates payable immediately before its preparation. When enhancement is claimed on the third or fourth of the said grounds, such table shall exhibit such prevailing rates, and shall further exhibit the enhanced rates allowed by the Collector upon such grounds respectively.

Meaning of a "Jamabandi."

A "Jamabandi" means a table or schedule which exhibits the names of the ryots in an estate, tenure or under-tenure; the quantity of land or, when such land consists of different classes, the quantity of each class held by each ryot; the rate of rent previously payable for each class of land; the total rent payable by each ryot for the total land of each class held by such ryot, and the grand total of rent payable by each ryot.

Meaning of an "Enhanced Jamabandi."

An "Enhanced Jamabandi" is a jamabandi which further exhibits—

(*a*) when enhancement is allowed on the first of the grounds specified in section 22—the prevailing rate of rent allowed for any class of lands instead of the rate previously payable; the new total rent payable, in consequence, for all the land of such class held by each ryot; and the new grand total of rent payable by each ryot:

(*b*) when enhancement is allowed on the second of such grounds—the additional land of each class proved to be in the possession of each ryot; the new total rent payable, in consequence, for all the land of such class held by each ryot; and the new grand total of rent payable by each ryot:

(*c*) when enhancement is allowed on the third or fourth of such grounds—the enhanced rate of rent allowed for each class of land; the new total rent payable, in consequence, for all the land of such class held by each ryot; and the new grand total of rent payable by each ryot.

Meaning of a "Settlement Jamabandi."

A "Settlement Jamabandi" is a jamabandi prepared by the Collector upon the application of a landlord, who is unable to ascertain the ryots liable to pay rent to him, the rents payable by such ryots, or the plots of land in respect of which such rents are payable by each of such ryots.

A.—*Proceedings to obtain a Table of Rates.*

Applicant for table of rates to present with his application a copy of the table according to which he claims to collect rents from occupancy ryots.

101. (*a.*) When *The Applicant* prays that the Collector shall prepare a table of rates for the estate, tenure, or under-tenure in respect of which the application is made, he shall with his application present a copy of the table of rates which he alleges to be fair and equitable, and according to which he claims to collect enhanced rents from ryots having a right of occupancy. He shall further distinctly specify in such application the grounds upon which he claims to enhance such rents; and, in the case of the third and fourth grounds specified in section 22, the period at which such grounds came into operation.

Notice to be given to ryots to assent or object within one month.

(*b.*) The Collector shall thereupon give notice to all such ryots in the estate, tenure, or under-tenure, in respect of which the application is made, and shall by such notice call upon them to appear within one month and agree to the rates specified in such copy or state their objections, if any, to such rates.

If ryots do not assent to such rates, or if they or any of them object thereto, Collector to proceed to prepare a table of rates—to give reasons for allowing or disallowing any rate claimed by *The Applicant.*

102. (*a.*) If within one month after the publication or service of such notice all the ryots, whose rents *The Applicant* seeks to enhance, assent to the rates so specified, the Collector shall prepare a table of rates accordingly, and the provisions of section 105 shall be applicable thereto. If all such ryots do not assent to the rates so specified, or if they or any of them appear and object to such rates, the Collector shall proceed to prepare a table of rates for the estate, tenure, or under-tenure, in respect of which the application has been made. Upon the conclusion of his proceedings, he shall draw up a statement thereof, and shall therein set forth the grounds upon which he allows or disallows the rates claimed by *The Applicants*, or any of them; or allows any lower rates in substitution thereof.

Table of rates to be published with notice to *Applicant* and ryots that they may object.

(*b.*) The table of rates so prepared shall be published together with a notice intimating to *The Applicant* and the ryots that any objections, which he or they may desire to make to such table of rates or to any portion thereof, must be made by a written petition to be presented to the Collector within one month after such publication.

Collector may upon such objections alter or amend the table of rates.

Collector to submit table of rates together with his proceedings and petitions of objection to superior revenue authorities for revision.

103. If any such objections are presented, the Collector may proceed to consider the same, and may alter or amend the table of rates prepared by him. Upon the expiry of the said period of one month, or upon so amending or altering the table of rates, the Collector shall submit such table of rates together with his proceedings and any petitions of objection that may have been presented by *The Applicant* or by the ryots, to the Commissioner of the Division or through the Commissioner of the Division to the Board of Revenue for revision. The Lieutenant-Governor may from

time to time by an order, which shall be published in the *Calcutta Gazette*, direct what cases shall be finally revised by the Board of Revenue or by a Commissioner, regard being had to the total amount of rents involved or to the area of the lands or the number of ryots affected.

Lieutenant-Governor to regulate powers of revision of Board and Commissioner.

Board or Commissioner to have full power to revise, amend, or alter table of rates, and may direct further enquiry, and may hear any party interested.

104. The Board of Revenue or the Commissioner shall have full power to revise, amend, or alter in any manner which appears proper, the table of rates and the proceedings submitted under the provisions of section 103, and to allow or reject in whole or in part any objection forwarded therewith, and may before passing final orders direct and await further proceedings or enquiries in any case in which it may appear expedient to take this course. The Board or Commissioner when exercising these powers of revision may hear, but shall not be bound to hear, any person affected by the proceedings or any pleader or advocate appearing on behalf of such person.

Table of rates to be binding for ten years subject to variation for alluvion or diluvion.

105. (*a.*) Such table of rates as may be finally sanctioned by the Board or the Commissioner shall be conclusive between *The Applicant* and the ryots aforesaid in all such proceedings either in the Civil Court or before the Collector, as are mentioned in section 106, and shall have effect in respect of the lands with which the proceedings are concerned for a period of ten years from the commencement of the year next following that in which the notice mentioned in clause (*b*) of section 102 was published, and thereafter, until altered by fresh proceedings under this Act: and the rates specified in such table shall, subject to the other provisions of this Act, be deemed to be the fair and equitable rates payable for such lands by ryots who have a right of occupancy, but who are not entitled by custom or contract or special equitable considerations to hold at more favourable rates.

Certified copy of table of rates conclusive as to provisions of Act having been followed.

(*b.*) Such table of rates or a certified copy thereof shall be conclusive evidence in every Civil Court that the proceedings of the Board, of the Commissioner, and of the Collector have been duly conducted in accordance with the provisions of this Act.

Applicant may enforce table of rates by suits in Civil Court:

or may apply for an enhanced jamabandi after three months.

Cost of preparing such an enhanced jamabandi when ryots recusant.

106. (*a.*) *The Applicant* may enforce such table of rates against such ryots by suit in the Civil Court and any number of ryots not exceeding ten may be made co-defendants in any such suit; or such applicant may, at any time after three months and within one year from the date of the table of rates being finally sanctioned, apply to the Collector for the preparation of an enhanced jamabandi; and the Collector shall upon such application proceed to prepare such enhanced jamabandi, and may for this purpose exercise all the powers which he is by this Act empowered to exercise for that purpose. If such Collector is satisfied that *The Applicant* was unable to put the table of rates in force in consequence of the recusant or unreasonable conduct of the ryots,

he may direct that the whole of the cost of preparing such enhanced jamabandi shall be paid by such ryots.

Burden of proof not to be altered in consequence of preparation of table of rates.

(*b.*) In any such proceedings in the Civil Court or before the Collector the burden of proof in respect of all matters other than the rates of rent for the classes of land specified in the table of rates shall lie upon *The Applicant* in the same manner as if he had in the first instance proceeded by suit in the Civil Court to enhance the rents of such ryots aforesaid.

B.—Proceedings to obtain an Enhanced Jamabandi.

Applicant for enhanced jamabandi to present with his application a copy of the enhanced jamabandi, according to which he claims to collect rents from occupancy ryots.

107. (*a.*) When *The Applicant* prays that the Collector shall prepare an enhanced jamabandi for the estate, tenure or under-tenure, in respect of which the application is made, he shall with his application present a copy of the enhanced jamabandi, which he alleges to be fair and equitable, and according to which he claims to collect enhanced rents from ryots having a right of occupancy. He shall further distinctly specify the ground or grounds upon which he claims to enhance the rent of each ryot specified therein; and, in the case of the third and fourth grounds specified in section 22, the period at which such grounds came into operation. The entry of any ryot's name in such copy of the enhanced jamabandi shall be deemed to be an admission that he has a right of occupancy in the land shown opposite his name.

Notice to ryots to assent or object within one month.

(*b.*) The Collector shall thereupon give notice to all the ryots mentioned in such copy of the enhanced jamabandi, and shall by such notice call upon them to appear within one month and individually assent to the entries respecting them individually in such copy of the enhanced jamabandi, or state their objections, if any, to such entries.

If all the ryots appear and assent to the enhanced jamabandi, Collector to make an order that it shall be binding upon both parties for ten years.

108. (*a.*) If within one month after the publication or service of such notice all such ryots appear and assent to the enhanced rates of rent claimed or to the entries concerning them individually in such copy of the enhanced jamabandi, the Collector shall make an order declaring such enhanced jamabandi binding upon *The Applicant* and the said ryots for the period of ten years from the date of such orders; and, subject to the provisions of this Act as to enhancement for land gained by alluvion and abatement for land lost by diluvion, such enhanced jamabandi shall be conclusively binding upon such *Applicant* and such ryots for the said period of ten years, and thereafter, until altered by agreement or by fresh proceedings under this Act.

If ryots do not all appear and assent, or if they or any of them object to the rates or the entries concerning them, Collector to proceed to prepare an enhanced jamabandi. Any ryot may at any time assent to entries concerning himself.

(*b.*) If within the said period of one month all such ryots do not appear and assent as aforesaid, or if they or any of them appear and object to the enhanced rates of rent claimed or to the entries concerning them in such copy of the enhanced jamabundi, the Collector shall proceed to prepare an enhanced jamabandi for the estate, tenure or under-tenure, in respect of which the application has been made. Any ryot may at any stage of the proceedings assent by a written petition to the rates and the particulars in the copy of the enhanced jamabandi, so far as they concern himself, and such rates and particulars shall thereupon become binding as between him and *The Applicant*.

Collector to draw up statement of proceedings and set forth grounds for allowing or disallowing rates or entries in copy of enhanced jamabandi.

109. (*a.*) Upon the conclusion of his proceedings, the Collector shall draw up a statement thereof and shall therein set forth the grounds upon which he allows or disallows or alters the rates and entries in the copy of the enhanced jamabandi or any of them. He shall then, in accordance with his determination of these matters, prepare an enhanced jamabandi.

Enhanced jamabandi to be published with notice to *Applicant* and ryots that objections may be made within one month.

(*b.*) The enhanced jamabandi so prepared shall be published together with a notice intimating to *The Applicant* and the ryots that any objections which he or they may desire to make to the rates or entries in such enhanced jamabandi must be made by a written petition to be presented to the Collector within one month after such publication.

Collector to deal with objections—may take further evidence before passing orders.

110. (*a.*) If any objection is made by *The Applicant* or by the ryots or any of them to the rates or entries in such enhanced jamabandi, the Collector shall deal therewith; and, in order to satisfy himself of the correctness of such objection or otherwise, he may take such further proceedings as to him appear necessary, and may therein exercise the same powers as he was competent to exercise in the original proceedings, and he may make any order which he deems proper, either cancelling, amending, or otherwise altering any such rate or any such entry, or rejecting such objection.

Appeal from Collector's order.

(*b*). Any landlord or ryot affected by such order may, if dissatisfied therewith, prefer an appeal to the Commissioner of the Division within thirty clear days; and such Commissioner may upon such appeal, after or without further enquiry, make such order as to him appears proper.

Enhanced jamabandi binding for ten years if no objection made, or as soon as objection made has been disposed of. Clause (b) of section 105 applicable thereto.

111. (*a.*) If no objection is made to such enhanced jamabandi within the said period of one month, or, if any such objection has been made, then as soon as it has been disposed of as provided in section 110, such enhanced jamabandi shall become conclusively binding between *The Applicant* and all the ryots mentioned therein, whether they or any of them have or have not appeared during the proceedings; and subject to the provisions of this Act as to enhancement for land framed by alluvion and abatement for land lost by diluvion, shall remain so conclusively binding for a period of ten years after the expiry of the said month, and thereafter until altered by agreement or by fresh proceedings under this Act. The provisions of clause (*b*) of section 105 shall further be applicable to such enhanced jamabandi.

Ryot compelled to pay rent to *Applicant* not liable to third party.

(*b*.) No ryot who is compelled to pay rent to *The Applicant* according to such enhanced jamabandi shall be liable in a suit for mesne profits to any third party claiming to be entitled to such rent, but any such suit shall be maintainable against such *Applicant* solely.

C.—Proceedings to obtain a Settlement Jamabandi.

Applicant for Settlement jamabandi to state in his application the circumstances under which he is unable to ascertain the rents payable to him.

112. (*a*.) When *The Applicant* prays that the Collector shall prepare a settlement jamabandi for the estate, tenure, or under-tenure, in respect of which the application is made, he shall in his application set forth the circumstances under which he is unable to ascertion the ryots liable to pay rent to him, the rents payable by such ryots, or the plots of land in respect of which such rents are payable by each of such ryots. The Collector, if satisfied that *The Applicant* is unable to ascertain accurately the particulars aforsaid, and that, in consequence, proceedings for the preparation of a table of rates or an enhanced jamabandi would be ineffectual, shall proceed to prepare a settlement jamabandi and shall thereupon give notice to the ryots in such estate, tenure or under-tenure.

Notice to ryots to state particulars.

(*b*.) Such notice shall call upon them to appear within one month and state the plots of land held by each of them, together with the class, quantity, and boundaries thereof, the rent previously paid for such land, and the rent which they are each of them willing to pay. Each ryot shall further state whether he claims to have a right of occupancy in the land held by him.

If ryots give particulars required of them, and *Applicant* assent thereto, Collector to prepare settlement jamabandi accordingly. If particulars not given, or if given and challenged, Collector shall proceed to determine what rents are payable, by what ryots, for what lands.

113. If within one month after the publication or service of such notice all the ryots appear and state the several particulars by such notice required of them, and if *The Applicant* assents to such particulars so stated, the Collector shall prepare a settlement jamabandi accordingly. The provisions of clause (*a*) of section 108 shall apply to such settlement jamabandi. If such ryots do not appear and state such particulars, or if such particulars having been stated by all or any of them are objected to by such *Applicant* on grounds which to the Collector appear *primâ facie* sufficient, such Collector shall proceed to ascertain and determine who are the ryots liable to pay rent to such *Applicant*, what are the lands for which such rents are payable, what rights such ryots have in such lands, and what are the rents or rates of rent, either in excess of the former rents or rates or otherwise, which *The Applicant* is entitled to receive from such ryots for such lands.

Collector to draw up statement of proceedings setting forth his determination and the grounds thereof.

114. Upon the conclusion of his proceedings the Collector shall draw up a statement thereof, and shall therein set forth his determination of the several matters mentioned in section 113 and the grounds of such determination. He shall then in accordance with his determi-

nation of these matters, prepare a settlement jamabandi. The provisions of clause (*b*) of section 109, and of sections 110 and 111 shall be applicable to such *settlement jamabandi*.

General Provisions.

Any number of landlords may join in an application, but Collector may direct separate proceedings.

115. It shall be lawful for any number of landlords to join in an application under section 99, subject, however, to the provisions of the said section as to jurisdiction; and such landlords so joining may specify the proportions in which they are willing to pay the costs of the Collector's proceedings; but the Collector may, if he see fit, direct that separate proceedings be held in respect of any estate, tenure, under-tenure, or specific area belonging to any *Applicant*, in which event such *Applicant* shall pay the costs of such separate proceedings.

Collector may endeavour to bring about amicable compromise. Such compromise to be binding.

116. In any case under section 101, section 107 or section 112, the Collector may, if he see fit, before proceeding to determine or settle the matters specified, endeavour to bring about an amicable compromise of the matters in dispute between *The Applicant* and the ryots; and, if any such compromise is brought about, the Collector shall draw up a formal record of its terms, and such record shall be binding upon all persons mentioned therein.

Applicant to deposit expenses of proceedings when required. Consequence of failing to do so.

117. (*a*.) *The Applicant* shall from time to time, when so required by a written notice signed by the Collector, deposit such sum of money as the Collector may estimate to be necessary in order to carry on the proceedings. If the *Applicant* fails to deposit such sum within fifteen days after such notice has been served upon him, the Collector may order the proceedings to abate; or he may in his discretion receive the said sum after the said fifteen days have expired.

Failure to deposit by some of several *Applicants* who (1) have joined under section 115, or (2) are coparceners.

(*b*.) When there are two or more *Applicants* who have joined under the provisions of section 115, any one of them may deposit such sum as the Collector estimates to be necessary to carry on the proceedings in respect of his own estate, tenure or under-tenure, and the Collector may carry on such proceedings, and may make an order that the proceedings do abate in respect of any estate, tenure or under-tenure belonging to any *Applicant* who has failed to deposit his share of the sum required by the Collector's notice. If such *Applicants* are coparceners, any one or more of them may, within seven days after the expiry of the said fifteen days, deposit any sum which any other of them has failed to deposit, and shall be entitled to recover any sum so deposited by a suit in the Civil Court.

One of two or more *Applicants* may deposit sum required and recover from defaulter.

No fresh proceedings for ten years after order of abatement or after withdrawal of *Applicant* without permission.

118. In any case in which the Collector makes an order under section 117 that the proceedings do abate, and in any case in which *The Applicant* withdraws from the proceedings without the permission of the Collector, no fresh enhancement proceedings may be instituted before

the Collector or in the Civil Court in respect of the lands with which such first-mentioned proceedings were concerned, until a period of ten years has elapsed from the date of such order of abatement, or from the date on which such proceedings terminated in consequence of such withdrawal : provided that nothing contained in this section shall be construed to prevent enhancement for land gained by alluvion or abatement for land lost by diluvion during such period of ten years.

Notice mentioned in sections 101, 102, 107, 109 and 112 how to be published.

119. (*a.*) Any such notice as is mentioned in clause (*b*) of section 101, clause (*b*) of section 102, clause (*b*) of section 107, clause (*b*) of section 109, or clause (*b*) of section 112, shall ordinarily be published affixing a copy thereof, and, in any case in which a copy of a table of rates or of an enhanced jamabandi or of a settlement jamabandi has been filed or is directed to be published, a copy of the same at the *mál kachari* of each village to which the lands, in respect of which the application has been made, belong, or at some conspicuous place in such village or upon such lands, and also by proclaiming with beat of drum in such village or upon such lands that such notice has been so affixed : provided that it shall be necessary to publish in each village so much only of such table of rates or enhanced jamabandi or settlement jamabandi as relates to the lands of such village.

Individual notice may be added to, or subtituted for, general notice.

(*b.*) When proceedings are taken against one ryot or a few ryots merely, or in any other case in which it appears proper, the Collector may in his discretion direct that an individual notice, containing the particulars concerning him, shall be served upon each ryot either in addition to or in substitution for the general notice in this section provided.

Collector in his proceedings to be guided by such rules as Board of Revenue may lay down.

120. In conducting such proceedings as may be neecessary in order to prepare a table of rates, an enhanced jamabandi, or a settlement jamabandi, the Collector shall govern himself by such rules as may be made by the Board of Revenue for his guidance.

Power of Board to make, revoke, and alter rules with sanction of Government.

The Board of Revenue, subject to the sanction of the Lieutenant-Governor of Bengal, may from time to time make, and when made, alter, add to, and revoke such rules not inconsistent with the provisions of this Act, as to such Board may appear necessary in order to give effect to these provisions. Such rules and all additions thereto, alterations and revocations thereof, shall be published in three successive issues of the *Calcutta Gazette*.

Collector may exercise powers of a Civil Court for summoning and examing witnesses, &c., and causing production of documents.

121. (*a.*) The Collector may in his discretion at any stage of his proceedings exercise all or any of the powers of a Civil Court in respect of summoning, causing the attendance of, and examining, witnesses, whether parties to the proceedings or not, and in respect of causing the production of documents, and giving or apportioning costs; and the provisions of *The Code of Civil Procedure* applicable to these matters shall apply to a Collector exercising such powers.

Reference to arbitration. Provisions of Code of Civil Procedure to apply.

(*b.*) He may also in his discretion at any stage of his proceedings, with the consent of the persons interested, refer any matter to arbitration; and the provisions of sections 506 to 522, both inclusive, of *The Code of Civil Procedure* shall apply, so far as is consistent with the provisions of this Act, to the proceedings in arbitration.

Collector to prepare annual price-lists of staple crops under general directions of Board of Revenue—to submit such price-lists to Board for approval or revision.

122. (*a.*) The Collector of every district shall prepare annual lists of the prices, at harvest time, of the staple crops mentioned in clause (*c*) of section 23, such price-lists shall be prepared in accordance with such general direction as may from time to time be prescribed by the Board of Revenue, and shall, when prepared, be submitted to the said Board for approval or revision.

Price-lists, when approved or revised by Board, to be published in *Calcutta Gazette* and to be *primâ facie* evidence of prices of staple crops.

(*b.*) Such price-lists for all districts and areas mentioned in the said clause (*c*) of section 23 shall, when approved or revised by the Board of Revenue, be published annually in the *Calcutta Gazette* under the signature of one of the Secretaries to the said Board. Any such price-list so published shall be relevant in any proceedings under this Chapter, and shall be *primâ facie* evidence of the price of such staple crops during the year and in the district or area for which it has been published as aforesaid.

Collector may make measurement, and may direct ryots to attend. Publication of notice.

123. (*a.*) The Collector may in his discretion at any stage of the proceedings make a measurement of all or any of the lands with which such proceedings are concerned, and may make an order directing the ryots and other persons concerned to be present at such measurement. Such order shall be published in the manner provided in section 119 for the publication of the notice therein mentioned.

Consequence of non-attendance.

(*b.*) Any ryot who, after the publication of such order, fails to attend and point out his land, shall be estopped from contesting the correctness of the measurement made, or any of the proceedings held in his absence. If after due inquiry the Collector shall be unable to make a measurement or ascertain the names of the ryots or other persons holding the lands, he may declare such lands to be at the absolute disposal of the landlord. If any ryot or other person appears within fifteen days after the Collector has recorded such a declaration and shows reasonable cause for his previous non-appearance, such Collector may, upon such terms and conditions as to him appear proper, alter or rescind his previous declaration. *If such ryot or other person does not show such reasonable cause, such Collector shall make an order refusing to alter or rescind such declaration. The provisions of clause* (*b*) *of section* 110 *shall be applicable to such order.*

Special Collector may be appointed for the purposes of this Act. Deputy Collector may act under supervision of Collector or special Collector.

124. The Lieutenant-Governor may invest any person with the powers of a Collector for the purposes of this Chapter; and may give such directions as appear convenient for dividing between such person and the Collector of the District the work arising under this Act. Any De-

puty Collector may, subject to the control and supervision of the Collector of the District or of any person so invested with the powers of a Collector, exercise all or any of the powers vested in a Collector by sections 101, 102, 103, 107, 108, 109, 110, 112, 113, 114, 115, 117, 119, 120, 121, 123, 126, 127 and 128. Such control and supervision may be exercised by such Collector or person aforesaid either of his own motion or upon petition by any person alleging himself to be aggrieved.

Appointment of ministerial officers, &c.

125. The Collector may, subject to any rules made in that behalf by the Board of Revenue, appoint such ministerial and other officers as may be required to make such enquiries, and to do all such things as may be necessary to carry out the provisions of this Chapter. The salaries of such officers and the term of their employment shall be subject to the sanction of the Commissioner.

On termination of proceedings, Collector to draw up account of total cost—Refund of balance—Recovery of deficiency.

126. As soon as the proceedings have become final upon the table of rates being finally sanctioned under section 104, or upon the disposal of the objections or appeals instituted under sections 110 and 114, the Collector shall draw up an account of the total cost of such proceedings. If such total is less than the sum total of the amounts deposited under section 117, the balance shall be refunded to *The Applicants* proportionally to the amount of their deposits. If such sum total exceeds the sum total of the amounts deposited, the deficiency shall be paid by *The Applicants* in the same proportion within fifteen days after service of a notice as provided in section 117, and in default of such payment, may be realised as a demand under the provisions of any law for the time being in force for the recovery of public demands.

Now Act VII (B. C.) of 1868.

What items may be included in the cost of the proceedings.

New.

127. The following items may be included in the account of the cost of the proceedings prepared under section 126:—

(*a*) the whole or a part of the salary and allowances of the Collector or Deputy Collector by whom the proceedings have been conducted. In settling the amount of this item regard shall be had to the portion of the Collector's or Deputy Collector's time occupied by the proceedings;

(*b*) the salaries of the ministerial officers appointed under section 125, or where such officers have been employed in several proceedings, a part of such salaries proportionate to the portion of their time occupied by the proceedings of which the account of the cost is being prepared;

(*c*) all contingent and other expenses actually incurred in the proceedings:

Proviso.

provided that the Collector or Commissioner may in his discretion, when deciding any objection made, or appeal preferred, under section 110 or section 114, direct that the immediate costs thereof shall be paid by the person making such objection or preferring such appeal, or by any party to the proceedings who opposes the same.

When *Applicant* succeeds, ryots to be liable for costs. Costs not to exceed one year's enhanced rent.

128. (*a.*) In any case in which an enhanced jamabundi has been prepared, and *The Applicant* is found entitled to enhanced rent as the result of the proceedings, the Collector may award to him costs payable by the ryots: provided that no ryot shall be liable to pay as costs a sum greater than one year's rent of his holding as settled by the enhancement proceedings. The Collector may in his discretion direct that the costs so payable by any ryot shall be paid by instalments extending over a period not longer than three years. Every such instalment shall bear interest at the rate of six per centum per annum from the date of the Collector's award until the date of realization.

Costs may be made payable by instalments.

Unpaid costs to be recoverable as arrears of rent.

(*b.*) Costs payable by a ryot under this section if not paid within fifteen days after the date of the award, or, where costs have been made payable by instalments, any instalment thereof not paid upon the due date, shall be recoverable in the same manner as arrears of rent.

Ryots entitled to copies.

129. Every person affected by the proceedings shall be entitled to a certified copy of the Collector's statement and of any table of rates, enhanced jamabundi, or settlement jamabandi prepared by the Collector under the provisions of this Chapter. Such copy shall be furnished to such person at his expense. A ryot shall be entitled to receive a certified copy of so much of any jamabandi as concerns himself upon payment of a fee of four annas.

District Judge may, on report of Civil Court, transfer to Collector any considerable number of cases instituted from same locality.

130. When any considerable number of cases has been instituted in a Civil Court by one or more landlords against ryots holding land in the same locality, and it appears to such Civil Court to be desirable that all such cases should be disposed of by the Collector in accordance with the provisions contained in this Chapter such Civil Court may make a recommendation in these terms to the District Judge to which such Court is subordinate: and such District Judge may, if he see fit, transfer such cases to such Collector, who shall thereupon proceed to deal with them in all respects as if an application had been made to him under the provisions of section 99. In any case in which the Collector proceeds thereupon to make a table of rates, or an enhanced jamabundi, or a settlement jamabundi, he shall before so proceeding define the area to which such table of rates, or enhanced jamabundi, or settlement jamabundi shall be applicable.

Power of Collector to proceed *suo motu* for the settlement of rent, when dispute exists.

131. If the Collector of a district is of opinion that, in consequence of a serious dispute likely to lead to a breach of the peace having arisen upon the subject of rent in a considerable area of his district, it is expedient that proceedings should be taken to settle the rents payable by the ryots to their landlords within such area, he may record his reasons for entertaining this opinion, and may forward them, through the Commissioner, for the consideration of the Lieutenant-Governor.

The Lieutenant-Governor, if satisfied of the expediency of taking such proceedings, may authorise such Collector to proceed of his own motion to settle such rents; and such Collector shall thereupon proceed to such settlement, and may to this end exercise the same powers as if an application had been made to him under section 99.

III.—Proceedings to enhance the rent payable in money by tenure-holders and under-tenure-holders.

Landlord desiring to enhance rent of tenure or under-tenure to proceed in Civil Court.

132. In the following cases, that is to say—

(*a*) in the case of a proprietor claiming to enhance the rent of a tenure-holder whose interest is immediately subordinate to that of such proprietor;

(*b*) in the case of a tenure-holder claiming to enhance the rent of an under-tenure-holder whose interest is immediately subordinate to that of such tenure-holder;

(*c*) in the case of a superior under-tenure-holder claiming to enhance the rent of an under-tenure-holder whose interest is immediately subordinate to that of such superior under-tenure-holder;

(*d*) in the case of a landlord claiming under the provisions of section 18 to enhance the rent of a ryot entitled to hold land at fixed rates;

(*e*) in the case of a landlord claiming under the provisions of section 42 to enhance the rent of such land as is specified in section 41;

Plaint when to be presented in order to affect rent of following year.

such proprietor or tenure-holder or superior under-tenure-holder or landlord shall present a plaint to the Civil Court or such officer as it appoints in this behalf. Such plaint shall in order to affect the rent of the following year be presented (*a*) in districts or parts of districts in which the Fusli or Umli year prevails, in or before the month of Baisakh; or (*b*) in districts or parts of districts in which the Bengali year prevails, in or before the month of Aughrun. The provisions of section 98 shall be applicable to every such plaint so presented to a Civil Court.

CHAPTER XVI.—OF THE RECOVERY OF ARREARS OF RENT IN CERTAIN CASES BY SUMMARY SALE WITHOUT DECREE.

Proprietors entitled to apply for summary sale of certain tenures.

Reg. VIII of 1819, Preamble, and s. 8, cl. 1. Article 135 of the Digest.

133. Subject to the provisions of section 70, and to the other provisions of this Chapter, proprietors of revenue-paying estates are entitled to apply in the manner hereinafter provided in sections 134 and 135 for periodical sales of *patni* tenures and other tenures upon which the right of selling or bringing to sale for an arrear of rent has been specially reserved by stipulation in the engagements interchanged on the creation of such tenures. The exercise of this power is not confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but applies equally to tenures held under engagements stipulating merely for a sale at the end of the year.

Reg. VIII of 1819, s. 8, cl. 2. Article 136 of the Digest.

First sale may be applied for on 1st Baisakh.

134. (*a.*) On the first day of Baisakh, that is, at the commencement of the following year from that of which the rent is due, any such proprietor may present a petition to the Collector[a] containing a specification of any balances that may be due to him on account of the expired year from all or any holders of tenures of the nature described in section 133.

Specification of balances due to be stuck up at Collector's kachahri, with notice of sale in default of payment.

(*b.*) Such specification of the balances due shall then be stuck up in some conspicuous part of the Collector's kachahri, with a notice that, if the amounts claimed be not paid before the first of Jeyt following, the tenures of the defaulters will on that day be sold by public sale in liquidation. If the 1st of Jeyt fall on a Sunday or holiday, the next subsequent day not a holiday shall be selected instead.

Similar notice to be stuck up at proprietor's sadr kachahri and a further notice to be published on the land.

(*c.*) A similar notice shall be stuck up at the sadr kachahri of the *proprietor* himself, and a copy or extract of such part of the notice as applies to the individual case shall be by him sent to be similarly published at the kachahri at which the business of the tenure is transacted, or at the principal town or village upon the land of the tenure of the defaulter. The *proprietor* shall be exclusively answerable for the observance of the forms above prescribed.

Reg. VIII of 1819, s. 8, cl. 2. Article 137 of the Digest.

Service and attestation of service of notice directed to be published on the land.

(*d.*) The copy or extract of such part of the notice as applies to the individual case shall be served by a single peon, who shall bring back the receipt of the defaulter or of his manager for the same, or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

If the people of the village object or refuse to sign their names in attestation, the peon shall go to the kachahri of the nearest Munsif, or, if there is no Munsif, to the nearest thana, and there make voluntary oath of the same having been duly published, a certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

Explanation.—Service upon the defaulter personally of the copy or extract of such part of the notice as applies to the individual case is not a sufficient substitute for publication at the kachahri or at the principal town or village upon the land of the tenure.

(*e.*) If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous[a] to the fifteenth of the month of Baisakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

Reg. VIII of 1819, s. 8, cl. 3. Article 138 of the Digest.

Second or mid-year sale may be applied for on 1st Kartik.

135. On the first day of Kartik[b] in the middle of the year the *proprietor* shall be at liberty to present a similar petition to the Collector with a statement of any balances that may be due on account of the rent of the current year up to the end of the month of Asin, and to cause

Sale to take place if arrear to date equal one-fourth or more of the annual rent.

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[a] Act XXXIII of 1850, which dispensed with the petition to the Civil Court.

[a] I. L. R. 1 Calc. 175.

[b] Note that this will be a month after the rent is due according to section 55.

similar publication to be made of a sale of the tenures of defaulters to take place on the first of Aghan, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartik, to less than one-fourth or a four-anna proportion of the total demand of the proprietor according to the kistbandi, calculated from the commencement of the year to the last day of Kartik.

Sale not to be stayed unless arrear claimed be lodged.

Reg. VIII of 1819, s. 14, cl. 1. Article 139 of the Digest.

136. (*a.*) If the balance claimed by the *proprietor* on account of the rent of the tenure remains unpaid *at sunset of the day next preceding* the day fixed for the sale of such tenure *under section* 134 *or section* 135, the sale shall be made without reserve in the manner provided in sections 140 and 141. *Save as provided in section* 137 *and in section* 138, *such sale shall not* be stayed or postponed on any account unless the amount of the demand *has been paid or* lodged *before sunset of the day next preceding the day of sale as aforesaid.*

New.

Explanation.—The balance claimed by the proprietor may be paid to such proprietor or to his agent having authority to receive it, or may, subject to the rules for the receipt of money in Government treasuries, be lodged in the Treasury of the Collector having jurisdiction under the provisions of section 146.

But suit will lie for its reversal.

(*b.*) It shall, however, be competent to any party desirous of contesting the right of the *proprietor* to make the sale, whether on the ground of there having been no balance due or on any other ground, to sue such *proprietor* for the reversal of the same, and upon establishing a sufficient plea to obtain a decree with full costs and damages.

Purchaser to be made party to such suit.

(*c.*) The purchaser shall be made a party to any such suit, and, upon making a decree for reversal of the sale, the Court shall be careful to indemnify him against all loss at the charge of the *proprietor* or person at whose instance the sale may have been made.

Illustrations.

In the following cases a sufficient plea is established:—

(*a*)—A, a *patnidar*, sues for the reversal of the sale of his *patni* tenure on the allegation that no notice was stuck up in a conspicuous part of the Collector's kachahri, as required by clause (b) of section 134, and this allegation is found to be true.

(*b*)—A, B and C, joint owners of a *patni* tenure, sue for the reversal of the sale of such *patni* tenure on the allegation that no copy or extract of the notice was published at the kachahri or at the principal town or village upon the land as required by clause (c) of section 134. This allegation is found to be strictly true, although it appears that a copy of the notice was served on A and B personally.

In the following case a sufficient plea is not established:—

(*c*)—A, a *patnidar*, sues for the reversal of the sale of his *patni* tenure on the ground that no copy or extract of the notice was published at the kachahri or at the principal town or village upon the land, as required by clause (*c*) of section 134. It is found that the copy or extract of the notice was published in the manner required by this clause; but that the peon did not bring back the receipt of the defaulter, or of his manager, or of three substantial persons residing in the neighbourhood as required by clause (*d*) of the same section; nor did he, as required by the same rule, make a voluntary oath before the nearest Munsif, or at the nearest thana, that the copy or extract had been duly published.

Reg. VIII of 1819, s. 14, cl. 2. Article 140 of the Digest.

Defaulter may apply for summary investigation before sale.

137. (*a*). In any case in which a tenure-holder contests the proprietor's demand of an arrear as specified in the notice advertised, such tenure-holder shall be competent to apply for a summary investigation at any time within the period of notice. The proprietor shall then be called upon to furnish his kabuliyat and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale.

But sale not to be stayed, unless amount of rent claimed be deposited.

(*b*.) Such award, if so made, will of course regulate the ulterior process; but if the case be still pending, the lot shall be called up in its turn notwithstanding the suit; and if the proprietor or his agent in attendance insists on the demand, the sale shall be made on his responsibility, nor shall it be stayed or the summary suit be allowed to proceed, unless the amount claimed *or its equivalent in Government securities* be *then* lodged, *or has been previously lodged*, by the tenure-holder contesting the demand; and if such deposit be not made, the alleged defaulter shall have no remedy but by a regular action for damages, and for a reversal of the sale.

Omission to ask for investigation not to preclude action.

(*c*.) The omission to apply for a summary investigation under this section shall not preclude the tenure-holder from bringing such regular action.

Reg. VIII of 1819, s. 13, cls. 1 and 2. Article 35 of the Digest.

Under-tenure-holders enabled to protect themselves from avoidance of their under-tenures upon sale of the tenure;

138. In order to give under-tenure-holders of the first degree an opportunity of protecting themselves against damage by the avoidance of their under-tenures upon the sale of the tenure, the following rules have been enacted:—

by paying in the amount for which the tenure is about to be sold;

(1) Any one or more of such under-tenure-holders may, when the tenure is advertised for sale, pay into the Collectorate treasury or to the officer conducting the sale the amount for the realization of which the tenure is about to be sold, and, on such payment being made, the sale shall be stayed.

or by lodging money antecedently to meet arrears.

(2) Any one or more of such under-tenure-holders may lodge money antecedently for the purpose of eventually answering any demand that may remain due on the day fixed for the sale of the tenure; and, should the amount lodged be sufficient, the sale shall not proceed, but after making good to the proprietor the amount of his demand, any excess shall be paid back to the person who lodged it.

Article 36 of the Digest.

Procedure if amount lodged be rent due from under-tenant.

Reg. VIII of 1819, s. 13, cls. 3 and 4: Act VIII (B.C.) of 1869, s. 62: Act VIII (B.C.) of 1865, s. 6: 4 B. L. R. F. B. 77.

139. (*a*.) In any case in which an under-tenure-holder has paid money under section 138 in order to protect his under-tenure, if the amount so lodged be *wholly or partly* rent due by such under-tenure-holder to the holder of the tenure about to be sold, the same shall be stated at the time of making the deposit, and the amount, *or so much thereof as may be necessary*, shall be carried to the account of the tenant lodging it, *in satisfaction of* any claim of rent that may at the time be pending, or be thereafter brought

forward against him by the proprietor of the advertised tenure on account of the year or months for which the notice of sale may have been published.

Procedure if amount lodged be an advance from private funds.

(*b.*) If the person making such a deposit in order to stay the sale of the tenure shall have already paid the whole *or part* of the rent due from himself, so that the amount lodged is *wholly or partly* an advance from private funds and not a disbursement on account of the said rent, such deposit *or the balance which remains after satisfying any claims to rent under clause* (*a*) shall not be carried to credit in, or set against, future demands for rent, but shall be considered as a loan made to the holder of the tenure preserved from sale by such means, and the tenure so preserved shall be the security to the person making the advance, who shall be considered to have a lien thereupon in the same manner as if the loan had been made upon mortgage; and he shall be entitled, on applying for the same, to obtain immediate possession of such tenure in order to recover the amount so advanced from any profits belonging thereto.

Defaulting tenure-holder must pay total sum advanced with interest, if he wants to recover his tenure.

(*c.*) If the defaulting tenure-holder shall desire to recover his tenure from the hands of the person who, by making the advance, has acquired such an interest therein and entered on possession in consequence, he shall not be entitled to do so, except upon re-payment of the entire sum advanced with interest at the rate of twelve per centum per annum up to the date of possession having been given as above, or upon exhibiting proof in a regular suit to be instituted for the purpose that the full amount so advanced with interest has been realised from the usufruct of the tenure.

Lots to be sold in order. Proprietor's agent to be present with account and receipt for notice.

Reg. VIII of 1819, s. 10. Article 141 of the Digest.

140. (*a.*) At the time of the sale the notice previously stuck up in the kachahri shall be taken down, and the lots shall be called up successively in the order in which they may be found in that notice. A person shall attend on the part of the proprietor with a particular statement of the payments made up to the day of sale on account of the balance of each advertised lot, together with the receipt or certificate mentioned in clause (*d*) of section 134. No lot shall be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read, the observance of which forms shall be recorded in a separate proceeding to be held upon each lot sold.

Kistbandi to be produced at second mid-year sale.

(*b.*) If the sale be of the description provided for in section 135, the kistbandi of the defaulter shall likewise be produced in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale, nor shall the sale take place unless this be ascertained.

Proprietor exclusively responsible for correctness of papers, &c.

(*c.*) The proprietor shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the Collector or other officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Chapter.

Act VIII (B. C.) of 1865, s. 3. Article 142 of the Digest.

Sale to be held by Collector in public kachahri: procedure to be observed at sale.

141. (*a.*) The sale shall be conducted in public by the Collector of land revenue within whose Collectorate the lands comprised in the tenure are situate. The tenure shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter.

Reg. VIII of 1819, s. 9.

Fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

Re-sale if 15 per cent. not deposited, &c.: or if remainder of purchase-money not paid. Deposit forfeited in latter case.

(*b.*) If the fifteen per cent. be not paid, or an equivalent amount in Government securities be not lodged within two hours of the sale, the lot shall be re-sold on the same day; and if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of re-sale on the following day, that is, on the ninth from the first sale, by proclaiming the same by the beat of drum through the bazar of the sadr station of the district, after which the lot shall be re-sold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per centum already made, and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one. Such deficiency shall be levied by the process for the execution of decrees of the Civil Courts.

Act XXV of 1850, s. 2.

Forfeited deposit how applied.

(*c.*) The forfeited deposit of fifteen per centum shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

Reg. VIII of 1819, s. 11. Article 143 of the Digest.

Tenure declared to be sold free of incumbrances created by act of defaulter.

142. (*a.*) Every tenure that may be disposed of at a public sale under the rules contained in sections 133 to 141, inclusive, for arrears of rent due on account of the same, is hereby declared to be sold free of all incumbrances that may have accrued upon it by the act of the defaulting proprietor, his representatives or assignees unless the right of making such incumbrances was expressly vested in the holder by a stipulation to that effect in the written engagements under which the said tenure was held.

No transfer, mortgage, &c., valid against proprietor unless he have consented thereto.

(*b.*) No transfer by sale, gift, or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the proprietor to hold the tenure of his creation answerable, in the state which he created it, for the rent, which is, in fact, his reserved property in the tenure, except such transfer or assignment has been made with a condition to that effect under express authority obtained from such proprietor.

All leases granted by defaulter are cancelled by sale.

(*c.*) In like manner, upon the sale of a *tenure* for arrears, all leases originating with the former *tenure-holder*, if creative of a middle interest between the resident cultivators and *such tenure-holder*, must be considered to be cancelled, except the authority to grant them have been specially transferred. The possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the ryots, this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent:

Exception in favour of *bonâ fide* engagements with ryots.

Provided that nothing contained in this section shall be construed to entitle the purchaser of a tenure to eject a khúdkasht ryot or resident and hereditary cultivator, or to cancel *bonâ fide* engagements made with such tenants by the late incumbent or his representative, except it be proved in a regular suit to be brought by such purchaser for the adjustment of his rent that a higher rate would have been demandable at the time such engagements were contracted by his predecessor. *Subject to these provisions any such purchaser shall be entitled to proceed under the provisions of his Act to enhance the rent of the ryots holding land in the tenure purchased by him, but no ryot shall be liable to ejectment otherwise than as provided in this Act.*

Certificate to be given to purchaser on payment of full amount of purchase-money.

Reg. VIII of 1819, s. 15, cl. 1. Article 144 of the Digest.

143. (*a.*) The purchaser, as soon as he has paid the full amount of the purchase-money, shall receive from the officer conducting the sale a certificate of such payment.

(*b.*) Such purchaser may then proceed with such certificate to procure a transfer of the tenure to his name in the kachahri of the proprietor, and upon furnishing security, if required, to the extent of half the annual rent, he shall receive the usual order for possession, together with a notice to the ryots and others to attend and pay their rents henceforward to him.

Zeminder bound to put him in possession.

(*c.*) The proprietor shall also be bound to furnish access to any papers connected with the tenure purchased that may be forthcoming in his kachahri; and should he in any manner delay the transfer in his office or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the Collector,[a] and he shall receive an order for possession and shall be put in possession of the land by an officer deputed by the Collector for that purpose in the same manner as possession is obtained under a decree of Court: provided, however, that if the delay be on account of the proprietor contesting the sufficiency of the security tendered, the rule contained in clause (*c*) of section 53 shall be observed.

Purchaser's remedy, if zemindar refuse or delay to put him in possession.

Procedure in case of opposition to purchaser by defaulter or persons claiming under him.

Reg. VIII of 1819. s. 15, cls. 2 and 3. Article 145 of the Digest.

144. (*a.*) When the new purchaser proceeds to take possession of the lands of his purchase, if the late incumbent himself or the holders of under-tenures or assignments derived from such late incumbent, and intermediate between him and the actual cultivators, attempts to offer opposition or to interfere with the collections of such new purchaser from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Collector[b] for the aid of the public officers in obtaining possession of his just rights.

[a] Act VIII (B.C.) of 1865, s. 3.

[b] Act VIII (B.C.) of 1865, s. 3.

(*b*) A proclamation shall then issue under the seal and signature of the Collector,[b] declaring that the new incumbent having by purchase at a sale for arrears of rent due to the proprietor acquired the entire rights and privileges attaching to the tenure of the late tenure-holder in the state in which it was originally derived by him from the proprietor, he alone will be recognized as entitled to *collect the rents from the ryots and others*, and no payments made to any other individual will on any account be credited to such ryots or other tenants in any suit for rent or on any other occasion whatever when the same may be pleaded.

Collector to issue proclamation.

(*c*.) If the late incumbent or his late tenants continue to oppose the entry of the new purchaser notwithstanding the issuing of such a proclamation, or if there is reason to apprehend a breach of the peace on the part of any one, the aid of the police officers shall be given to the new purchaser on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

Procedure in case of continued opposition by defaulter or his under-tenants.

Reg. VIII of 1819, s. 17, cl. 1.

145. The following rules shall be observed in disposing of the proceeds of the sale, that is to say—

Rules for disposal of the sale-proceeds.

Reg. VIII of 1819, s. 17, cl. 2.

(1) One per centum shall first be deducted from the net proceeds realized and shall be carried to the account of Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions contained in sections 133 to 144, inclusive.

One per cent. to be credited to Government.

Reg. VIII. of 1819, s. 17, cl. 3.

(2) The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the tenure to sale) to the proprietor or other person to whom the same may be due; provided, however, that no former balances beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied. Such antecedent balances, if the proprietor have omitted to recover them by summary sale at the time, shall be regarded as personal debts of the individual tenure-holder, and can be recovered only in the same manner as other debts by a regular suit in Court.

Zemindar's claim for rent to be next satisfied; proviso.

Reg. VIII of 1819, s. 17, cls. 4, 5, and 6.

(3) Any excess that may remain after satisfying the demand of the proprietor shall be sent by the officer conducting the sale to the Government treasury to be held in deposit to answer the claims of the under-tenure-holders of the first degree, or of others who by assignment of the defaulter may be at the time in possession of a valuable interest in the land composing the tenure sold, or any part of it.

Balance to be sent to Government treasury to meet claims of persons endamaged by sale.

Article 35 of the Digest.

(4) It shall be competent to any one conceiving himself to possess such an interest as is mentioned in clause 3 to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit.

Under-tenure-holders free to sue for price of their interest or compensation.

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[b] Act VIII (B.C.) of 1865, s. 3.

Award of Court if plaintiff's claim found equitable.

(5) If the Court on investigation considers the plaintiff's claim to be an equitable one, the Court shall award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances. If there be more claimants than one, payment shall not be made from the deposit until the whole of the claims be settled; and in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees.

Suit not to lie if under-tenure-holder be himself in arrear at time of sale.

(6) No under-tenure-holder of the first degree or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such under-tenure or assignment upon its becoming cancelled by sale of the tenure, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose *before* the sale.

Defaulter entitled to sale-proceeds, if no claims, or after-claims have been satisfied.

Reg. VIII of 1819, s. 17, cl.

(7) If no claims upon the balance of the sale-proceeds are brought forward by any under-tenants or assignees within the period of two months from the date of sale, or if the amount claimed by those who may have sued do not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the Court of there being no claims to afford ground of detention for the whole or any part of the deposit, and, upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt. In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates, the amount shall be paid severally to their receipts by the Collector.

Substitution of Government securities for cash in deposit.

Reg. VIII of 1819, s. 17, cl. 8.

(8) It shall be competent to any party interested in a deposit to withdraw the whole or any part thereof, on substituting Government securities bearing interest in lieu of the money so held in deposit. Such securities shall be taken at the rate of discount or premium of the day as shown by the *Government Gazette* last received.

Rules for the exercise of jurisdiction in summary sales by the revenue authorities.

Article 147 of the Digest.

146. The exercise of jurisdiction by the revenue authorities under sections 133 to 145, inclusive, shall be regulated by the following rules:—

Act VI of 1853, s. 1.

(1) If the lands included in the tenure be all situate in one Collectorate, the Collector of such Collectorate shall conduct the sale and otherwise exercise jurisdiction.

Act VI of 1853, s. 1.

(2) If the lands included in the tenure be situate in two or more Collectorates, the Collector in whose Collectorate the greater portion of such

lands is situate, shall conduct the sale and otherwise exercise jurisdiction.

Act VI of 1868, s. 2.

(3) In any case in which a Collector entertains any doubt as to whether the lands or the greater part of them are situate within his Collectorate, he shall report the case for the order of *the Commissioner or* the Board of Revenue. *When the lands are situate in two or more districts included in the division of the same Commissioner, such Commissioner, and when the lands are situate in two or more districts not included in the division of the same Commissioner, the Board of Revenue, may order the Collector* to proceed in the matter; and such order shall be conclusive upon the question of jurisdiction.

(4) *Subject to such rules as may be made in that behalf by the Board of Revenue, a Deputy Collector may be authorized by a Collector to conduct sales or otherwise exercise jurisdiction under this Chapter.*

CHAPTER XVII.—OF CERTAIN SPECIAL RULES OF PROCEDURE APPLICABLE TO SUITS BETWEEN LANDLORDS AND THEIR TENANTS OR AGENTS.

Article 173 of the Digest.

Code of Civil Procedure to apply to suits between landlords and their tenants or agents.

147. Save as in this Act is otherwise provided *The Code of Civil Procedure* shall apply to all suits brought for causes of action arising between landlords and their tenants or agents; and all proceedings in such suits before and after decree shall be governed by the provisions of the said Code. A special register of such suits shall be kept by every Civil Court in the manner prescribed by section 58 of the said Code.

Special register of such suits to be kept in every Court.

Article 174 of the Digest.

Suits between landlords and their tenants or agents where to be instituted.

148. The cause of action in all such suits shall be deemed to have arisen within the local limits of the jurisdiction of the Civil Court, which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant or the agency exists between the parties.

See Article 169 of the Digest.

Surbarakars and tehsildars of khas estates may sue and be sued in their own names.

149. All suits arising out of the relation of landlord and tenant, which may be brought by or against landlords, and all such suits against agents as are mentioned in section 160 may be brought (*a*) by and against managers appointed under "The Court of Wards' Act, 1879;" and (*b*) by or against surbarakars or tehsildars of estates held under the immediate management of the revenue authorities, whether such estates are the property of private persons or of the Secretary of State for India in Council. *All such suits shall be conducted or defended in the name of the Secretary of State for India in Council, or in the names of private persons to whom such estates belong.*

See Article 159 of the Digest.

Naibs or gomashtahs, thereto specially empowered, to be authorized agents in cases arising out of the relation of landlord and tenants.

150. (*a*) Every naib or gomashtah thereto specially empowered by a written authority under the hand of his employer shall, for the purposes of all such suits as are mentioned in section 149, be deemed to be the recognized agent of such employer within the meaning of sections 36, 37 and 38 of *The Code of Civil Procedure*, notwithstanding that such employer may be within the local limits of the jurisdiction of the Court in

which any appearance, application, or act is made or done by such naib or gomashtah. Any such suit shall, nevertheless, be instituted and conducted in the name and on behalf of such employer.

Notice may be served upon, or money or fee tendered to naib or gomashtah instead of landlord.

(*b*) *Every notice which may under any of the provisions of this Act be served upon, and every sum of money or fee which may under any of the provisions of this Act be tendered to, a landlord, may be served upon, or tendered to, any naib or gomashtah of such landlord empowered in the manner and for the purpose mentioned in clause (a); and such service or tender shall be as effectual as service upon, or tender to, such landlord himself.*

Suit by landlord or tenant to determine conditions of tenancy.

151. Every landlord shall be entitled to maintain a suit against any ryot, the rent of whose holding is payable to such landlord, and, *subject to the provisions of section* 32, every ryot shall be entitled to maintain a suit against his landlord for the determination of all or any of the following matters, that is to say,—

(*a*) the quantity of land held by such ryot:

(*b*) the amount of annual rent payable for such land:

(*c*) the class to which such ryot belongs, that is to say, whether he is a ryot entitled to hold at fixed rates, or is a ryot having a right of occupancy, or has held and cultivated his land for three or more years within the meaning of sections 32, 33, and 34.

The plaint in any such suit shall state the allegation of the plaintiff as to each of such matters respectively. No such suit shall be dismissed merely because the plaintiff fails to prove exactly the allegations made in his plaint.

Claim for ejectment or cancelment of lease how to be put forward.

Article 93 of the Digest. Act VIII (B. C.) of 1869, s. 52: Act X of 1859, s. 78.

152. A landlord desiring to eject a ryot or to cancel a lease on account of non-payment of arrears of rent may sue for such ejectment or cancelment, and for recovery of the arrears in the same suit, or he may sue for such ejectment or cancelment, producing an unexecuted decree for arrears of rent as evidence of the existence of such arrears. In all such suits the decree shall specify the amount of the arrears, and if such amount, together with interest and the costs of the suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed. *If the Court is closed on the fifteenth day, such amount may be paid in on the day upon which the Court re-opens.*

Stay of ejectment on satisfaction of decree within 15 days.

12 B. L. R. 439 (P C): B. L. R. F. B. 972.

Explanation 1.—The judgment-debtor is entitled to the benefit of this fifteen days' rule, even though the lease contains a stipulation that it shall be void upon one or more instalments of rent falling into arrear, or upon the breach of any other condition as to payment of rent therein contained.

Marsh, 471.

Explanation 2.—If the original decree is altered or amended on appeal or review, the fifteen days shall be computed from the date of the judgment on appeal or review. If on appeal or review the original decree be not altered or amended, the fifteen days shall be computed from the date of such original decree.

23 W. R. 50.

Suit for abatement of rent to be instituted by ryot before what tribunal.

153. A suit for abatement of the rent payable by a ryot who has as a tenant held, or has as a tenant occupied and cultivated, land for more than three years, may be instituted,

(1) when abatement is claimed on the first or second ground specified in section 25 in the Civil Court or before the Collector;

(2) when abatement is claimed on the third ground specified in section 25 before the Collector only:

provided that no such suit shall be instituted before the Collector unless ten ryots at least join in bringing the same. Ten or more ryots may join in bringing any such suit, if the rent of all the land in respect of which the suit is brought is payable to the same landlord, although the holdings of such ryots are separate.

Suit for abatement by tenure-holder or under-tenure-holder or mokarraridar to be instituted in the Civil Court.

(*b*.) A suit for abatement of the rent payable by a tenure-holder or under-tenure-holder, or by a ryot holding at fixed rates and entitled under section 18 to abatement of rent on account of diluvion, shall be instituted in the Civil Court.

Procedure in such suits.

(*c*.) The provisions of section 98 shall be applicable to every suit for abatement instituted in the Civil Court; and the provisions of Chapter XV, so far as they are relevant, shall be applicable to every suit for abatement instituted before the Collector.

See Article 172 of the Digest.

Process of execution may be issued against person or property, but not against both.

154. Subject to the provisions of section 64, process of execution in any such suit as is mentioned in section 149 may be issued against either the person or property of the judgment-debtor, but such process shall not be issued simultaneously against both his person and property. Process of execution against the property may be issued against either the moveable or immoveable property or against both.[*b*]

This alters the present law—see Articles 151, 157, and 172 of the Digest, and 1 B. L. R. A. C. 217.

Article 177 of the Digest: Act VIII (B.C.) of 1869, s. 53.

Court to issue immediate execution in certain cases of ejectment, &c.

155. When in a suit brought by a landlord to eject a ryot liable to ejectment under the provisions of this Act, or to eject a farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or an agent after the determination of his agency or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, the Court passes a decree in favour of the plaintiff, no application for execution in the form provided in section 235 of *The Code of Civil Procedure* shall be necessary, but such Court shall forthwith, upon the plaintiff depositing in Court the necessary expenses, make an order for delivery of possession in execution of the decree: provided, however, that in cases to which section 152 is applicable, no such order shall be made until after the expiration of fifteen days from the date of the decree.

Article 178 of the Digest, Act VIII (B.C.) of 1869, s. 54.

In such cases, execution not to be stayed, pending appeal.

156. It shall not be lawful for the Court to entertain an application for stay of execution of the order mentioned in section 155 pending an appeal, and no person, who shall have been evicted under any such order, shall be restored to possession so long as the decree under which such order was issued shall remain unreversed.

Article 179 of the Digest. This reproduces Act VIII (B.C.) of 1879, s. 102, which has been held by a Full Bench of the Calcutta High Court not to be *ultra vires* of the Bengal Legislative Council (I. L. R. 3 Calc., 151).

No appeal from any degree of a District Judge or any Additional Judge for money below Rs. 100, unless right to enhance rent or title to land be determined by judgment.

157. Nothing contained in this Act shall be deemed to alter the law as established by Act X of 1859 passed by the Governor General in Council, so as to confer a right of appeal in any suit tried and decided under the provisions of *The*

Code of Civil Procedure or of Chapter XVIII of this Act by a District Judge or additional[a] Judge originally or in appeal, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, and if no question of right to enhance or vary the rent of a ryot or tenant, or no question relating to title to land or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment[b] in such suit.

[a] 13 B. L. R. 376.

[b] 15 B. L. R. 1.

Illustration.

A sues B for the rent of certain land. B pleads that the rent of the land is payable to C, and not to A. C is not made a party to the suit, which is decreed against B. No question relating to a title to land, or to some interest in land, as between parties having conflicting claims thereto is determined by the judgment in this suit.

21 W. R., 36, 23 W. R., 227.

Review of judgment not admissible after 30 days.

158. No application for a review of a judgment or order passed in any such suit as is mentioned in section 149 shall be received by a Civil Court other than the High Court of Judicature at Fort William in Bengal, after the expiration of thirty days from the date of such order or judgment.

Article 180 of the Digest.

Notice or summons not specially provided for to be served under the provisions of *The Code of Civil Procedure* for service of summons on defendant.

159. Any notice or summons, which it is necessary to issue under this Act and for the service of which no special provision is made, shall be served under the provisions contained in section 174 for service of summons on a defendant.

Suits against Agents.

Suits for money or accounts or papers against agents employed in collection or receipt of rents or management of land.

160. When an agent employed; by a landlord in the collection or receipt of rents or the management of land neglects or refuses to deliver to such landlord any money accounts or papers which have come into or have been in his own hands in the course of such employment, or neglects or refuses to render a proper account of his receipts and disbursements, such landlord may sue such agent in the Civil Court.

Note the effect of the words in brakets. The provisions of the existing law do not apply to *amlah* who do not collect the rents from the tenants, but who receive them from those who collect.

Landlord may sue for exact sum of specific accounts of papers when known.

When such landlord is able to ascertain the exact sum of money or the specific accounts or papers in the hands of such agent he shall state such sum or describe such accounts or papers in his plaint.

As, for example, when an account has been rendered and a balance struck.—See 20 W. R. 309.

When exact sum on specific papers not known in consequence of agent not having rendered proper accounts, landlord may ask that Court take an account.

161. When such landlord is unable to ascertain the exact sum of money or the papers, vouchers or other documents in the hands of the agent in consequence of such agent having neglected or refused to render proper accounts, such landlord shall set forth this fact in his plaint and may pray that the Court take an account from such agent and make a decree for the payment of such sum of money, if any, which upon taking such account may be found to be due to such landlord, and for the delivery of such papers, vouchers or other documents as may be found to be in the hands of such agent.

It is the duty of every agent to keep and render proper accounts—*See* Story on Agency, pp. 235-236

162. The provisions of *The Code of Civil Procedure* shall be applicable to every plaint presented

See Story's Equity Jurisprudence, Vol. I, p. 465 and following pages; and 24 W. R. 70.

under section 160 or section 161; but, in the case of any such plaint as is described in section 161, the summons to the defendant issued under section 64 of the said Code shall call upon such defendant to show cause why he should not render a full and satisfactory account of all sums received and disbursed by him, and of all papers, vouchers or other documents which may have come into his hands in the discharge of his duties as agent.

Summons to defendant to require him to show cause why he should not render accounts.

See Section 121 of the Oudh Act XIX of 1868.

If defendant fail to show cause or do not show sufficient cause, Court shall make an order that a proper account be filed, and shall fix a date by which it shall be filed. Such order how enforced.

163. If such defendant fails to show cause or does not, in the opinion of the Court, show sufficient cause why he should not render such full and satisfactory account, the Court shall make an order requiring such defendant to file such account in Court and shall fix a day on or before which such account shall be so filed. Such order may be enforced in the manner provided in section 260 of *The Code of Civil Procedure.*

Plaintiff to be allowed time to examine account filed and object. Day to be fixed for hearing objections. Decree to be made after hearing.

164. When such defendant files such account the Court shall allow the plaintiff a reasonable time to examine it and file objections thereto, if he desires to make any such objections, and shall then fix a date upon which such Court shall proceed to hear such objections, if any, and to examine such account. If upon such hearing it appears that the plaintiff is not entitled to any sum of money, or to any papers, vouchers, or other documents in the hands of the defendant, such suit shall be dismissed. If it appears that the plaintiff is entitled to a sum of money or to any such papers, vouchers, or other documents, a decree shall be made for the payment or delivery thereof, and such sum of money, papers, vouchers or other documents shall be specified in such decree.

CHAPTER XVIII.—OF THE PROCEDURE IN SUITS FOR THE RECOVERY OF ARREARS OF RENT, &C. AND CERTAIN OTHER SUITS.

Procedure contained in this Chapter to be followed in certain suits, when relation of landlord and tenant is admitted or proved.

165. When the relation of landlord and tenant is admitted or proved to subsist between the parties, the procedure contained in this Chapter shall apply to the following suits, that is to say—

(1) to suits for the recovery of the rent of land situated outside the local limits of the ordinary original jurisdiction of the the High Court of Judicature at Fort William in Bengal:

(2) to suits for ejectment from any such land:

(3) to suits brought to recover possession of any such land:

(4) to suit for damages on account of illegal exaction of rent or cesses, or on account of the refusal of receipts:

(5) to suits brought under section 52 to compel the registration of successions to, or transfers of, tenures, under-tenures, or occupancy holdings.

District Judge may direct any such suit to be tried under the ordinary provisions of *The Code of Civil Procedure.*

Provided that it shall be competent to the District Judge, upon the application of any party thereto, to direct that any such suit shall be tried according to the provisions of *The Code of Civil Procedure*, and upon such order being made the whole of such provisions shall be applicable to the trial of such suit.

The Plaint, &c.

Plaint to be presented to Civil Court of lowest grade competent to try suit.

166. The suit shall be instituted by presenting a plaint. Such plaint shall be presented to the Civil Court of the lowest grade competent to try such suit.

Place of suing how determined when there are different local limits of jurisdiction.

If the land mentioned in section 148 is situate within the limits of different districts or within the limits of a single district, but within the jurisdiction of different courts the provisions of section 19 of *The Code of Civil Procedure* shall be applicable.

While such suit is pending, no subsequent suit to be entertained for same subject-matter between same parties.

While a suit so instituted is pending, no court shall receive or try another suit instituted for the same relief between the same parties, or parties under whom they or any of them claim, and in which the matter in issue is directly and substantially in issue in the suit so previously instituted.

Particulars to be contained in plaint.

167. The plaint must contain the following particulars:—

(*a*) the name of the Court in which the suit is brought;

(*b*) the name, description and place of residence of the plaintiff;

(*c*) the name, description, and place of residence of the defendent;

(*d*) a simple concise statement of the claim;

(*e*) the date when the cause of action arose;

(*f*) a demand of the relief prayed for; and

(*g*) in suits concerned with tenures, under-tenures, holdings, or land, the extent, situation, designation, and boundaries of the same; or, where the plaintiff is unable to give the boundaries, in lieu thereof a description sufficient for identification.

See Article 185 of the Digest.

The provisions of section 49 of *The Code of Civil Procedure* as to the language of the plaint shall be applicable.

Article 187 of the Digest. Section 51 (as amended) of the Code of Civil Procedure.

Plaint to be signed and verified.

168 (*a*). The plaint shall be signed by the plaintiff, and in any case in which he has employed a pleader by such pleader. It shall also be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case: provided that if the plaintiff by reason of absence or for other good cause is unable to sign the plaint, it may be signed by any person duly authorised by him in this behalf.

The provisions of section 52 of *The Code of Civil Procedure* as to the contents and signature of the verification shall be applicable.

Rejection, amendment, return, and admission of plaints.

(*b*.) The provisions of sections 53, 54, 55, 56 and 57 of *The Code of Civil Procedure* as to rejecting, amending and returning plaints shall, so far as they are relevant, apply to plaints presented under section 166. When any such plain is admitted, the Court shall cause the particulars mentioned in section 167 to be entered in the register prescribed by section 147. Such entries shall be numbered in a separate series for each year according to the order in which plaints are admitted.

Parties, &c.

Substituting, dismissing and adding of parties.

Person claiming adversely to the landlord or tenant who are parties to the suit, not to be added as a party.

169. The provisions of section 27 of *The Code of Civil Procedure* as to substituting or adding a plaintiff for or to a plaintiff suing, and the provisions of section 32 of the same Code as to dismissing or adding parties, shall be applicable to all suits instituted and tried under the provisions of this Chapter: provided that the Court shall not add as a party to any suit tried under the procedure contained in this Chapter a person setting up a title adverse to the plaintiff or defendant in respect of the subject-matter of the suit: but any question of title disputed between any such person and a party to the suit may be decided in such suit as between the parties thereto, if the decision of such question is necessary to the proper determination of the suit.

Illustration.

A, proprietor, sues B, a ryot, for the rent of a holding, and files in court a kabuliyat alleged to have been executed for such holding by B in his favour. B denies the execution of the kabuliyat, and pleads that his holding forms part, not of A's estate, but of the state of X, a neighbouring proprietor. X appears, makes a similar allegation, and desires to be made a party to the suit. The court shall not make X a party to the suit, but shall confine itself to the question of the genuineness of the kabuliyat.

Provisions of *Code of Civil Procedure* as to joinder of causes of action, transfer of suits, and employment of recognised agents and pleaders made applicable to suits under this Chapter.

170. The following provisions of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the provisions of this Chapter, that is to say,

Section 45 as to the joinder of causes of action;

Section 25 as to the transfer of suits; and

Section 36, clauses (*a*) and (*b*) of section 37, sections 38, 39, 40 and 41 as to the employment of recognized agents and pleaders.

Documentary Evidence, &c.

Certain provisions of *The Code of Civil Procedure* as to the production, &c., of documentary evidence made applicable to suits under this Chapter.

171. The following provisions of *The Code of Civil Procedure* as to the production, admission, rejection and return of documentary evidence shall be applicable to all suits instituted and tried under the provisions of this Chapter, that is to say—

Section 59, as to the production of any document upon which plaintiff sues, and the delivery of such document or a copy thereof, and as to a list of the documents relied on by plaintiff as evidence:

Section 60, as to stating in whose possession or power a document is:

Section 62, as to production of shop-books and marking or returning entries therein:

Section 63, as to inadmissibility of documents not produced when plaint is filed:

Section 137, as to Court sending for papers from its own records or from other Courts: provided that any such affidavit as is mentioned in the said section 137 may be made by a *mukhtar*, or by any person acquainted with the facts:

Section 138, as to documentary evidence being in readiness at the first hearing:

Section 139, as to the effect of the non-production of documents:

Section 140, as to the Court receiving documents and rejecting irrelevant or inadmissible documents:

Section 141, as to placing documents on the record, as to marking and filing proved documents, and as to entries in books:

Section 142, as to marking and returning rejected documents:

Section 143, as to the Court ordering documents to be impounded; and

Section 144, as to the return of documents admitted in evidence.

Proceedings preliminary to hearing.

Issue of summons to defendant. Appearance how to be made.

Article 191 of the Digest. C. C. P., section 64.

172. When the plaint has been registered under section 168 a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified—

(*a*) in person, or

(*b*) by a pleader, duly instructed and able to answer all material questions relating to the suit, or

(*c*) by a pleader, accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court: provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

Personal appearance of parties.

The provisions of sections 66 and 67 of *The Code of Civil Procedure* as to the personal appearance of a plaintiff or defendant, and of section 69 of the same Code as to fixing the day for the appearance of the defendant, shall apply to all cases instituted and tried under this Chapter.

Summons to be for final disposal of case and to direct defendant to produce documents and witnesses.

Article 192 of the Digest. C. C. P., Sections 68, 70, and 71.

173. The summons shall be for the final disposal of the suit. It shall direct the defendant to produce any document the production of which is required by the plaintiff or upon which such defendant may desire to rely in support of his defence. It shall further instruct the defendant to bring his witnesses on the day specified, if they are willing to attend without summons, or, if they are not so willing, to have summons served upon them in sufficient time to enable them to be present on such day.

Provisions for service of summons on defendant.

Articles 193, 194, 195 and 169 of the Digest.

174. The following provisions of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the provisions of this Chapter, that is to say—

Section 72, as to delivery of summons for service on defendant:

Section 73, as to mode of service:

Section 74, as to service on several defendants, except the proviso:

Section 77, as to service on agent in charge of immovable property:

Section 78, as to service on adult male member of defendant's family:

Section 79, as to person served signing an acknowledgment:

Section 80, as to procedure when defendant or other person refuses to sign the acknowledgment or cannot be found:

Section 81, as to endorsement of time and manner of service:

Section 82, as to examination of serving officer and substituted service:

Section 83, as to the effect of substituted service:

Section 84, as to fixing time for appearance when service is substituted:

Section 85, as to service of summons when defendant resides within jurisdiction of another Court and has no agent to accept service:

Section 86, as to service within the Presidency Town:

Section 87, as to service on defendant in jail:

Section 88, as to procedure, if jail be in a different district:

Section 91, as to substitution of a letter for a summons:

Section 92, as to the mode of sending such letter:

Section 93, as to process being served at the expense of the party issuing it:

Section 94, as to notices and orders in writing being served as summonses: and

Section 95, as to postage:

Provided that if, in any suit for arrears of the rent of a transferable tenure, under-tenure or holding service of summons on the defendant cannot be effected in accordance with the above provisions, the Court may direct that a copy of such summons be posted up in some conspicuous place upon the land included in such tenure, under-tenure or holding, and that this shall be deemed a good and sufficient service.

See Article 197 of the Digest; and sections 477, 478, C. C. P.

Arrest of the defendant before judgment allowed in certain cases, but not in case of tenure, under-tenure or occupancy holding hypothecated for its own rent.

175. If in any such suit as is mentioned in clause (1) of section 165 the plaintiff presents with his plaint an application for the arrest of the defendant before judgment, on the ground that, if a summons be issued in the first instance, such defendant will abscond instead of appearing to answer the claim, the Court shall examine the plaintiff or some one on his behalf acquainted with the facts and shall inspect the documents, if any produced by the plaintiff, and if it is satisfied—

(*a*) that the defendant is resident within the district in which such court is held;

(*b*) that there are *primâ facie* grounds for believing the claim to be well-founded; and

(*c*) that if a summons be issued in the first instance, the defendant will abscond instead of appearing to answer the claim;

Article 176 of the Digest.

the Court may issue a warrant for bringing the defendant before it to show cause why he should not give security for payment of the amount claimed by the plaintiff: provided that no such warrant shall be issued in a suit for arrears of rent of any such tenure, under-tenure or occupancy holding as is mentioned in section 64.

Article 198 of the Digest.

Time for return of warrant. Notice to be served on defendant when arrested.

176. When any such warrant is issued the Court shall fix a reasonable time for the return thereof, and the officer entrusted with the service shall at the time of arresting the defendant deliver to him a notice containing the particulars of the claim, and requiring the defendant, if he contest the same, to bring with him any document upon which he may intend to rely in support of his defence.

Article Digest.

Procedure when defendant is arrested and brought before the Court under warrant.

177. In any case in which a defendant is arrested under any such warrant, he shall be brought with all convenient speed before the Court, and the Court may, if it thinks fit, and if the defendant fails to show cause to the contrary, require him to give security for payment of the amount claimed by the plaintiff, and in default of such security being given, may commit such defendant to the civil jail to be there detained until he shall furnish such security or deposit such sum as the Court may order: *provided that the defendant may at this stage apply to be declared an insolvent, in which event the provisions of Chapter XX of the Code of Civil Procedure shall be applicable.*

The provisions of section 480 of *The Code of Civil Procedure* as to an application by a surety to be discharged shall be applicable to any case in which security is given by the defendant: and the provisions of section 482 of the same Code as to subsistence allowance shall be applicable to any case in which the defendant is committed to the civil jail.

Article 200 of the Digest.

Procedure if warrant of arrest cannot be served upon the defendant.

178. If the defendant cannot be arrested under the warrant, the Court may on the application of the plaintiff either postpone the case for such period as it may think proper to enable such plaintiff to apply for another warrant, or may forthwith issue a proclamation to be affixed in the Court-house and at the residence of the defendant, fixing a day for the hearing of the case which shall not be less than ten days from the date of the publication of such proclamation at the residence of the defendant. If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in section 177.

Compensation for arrest obtained without reasonable cause.

179. If it shall appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may in its decree award to such defendant such sum as it may deem a reasonable compensation for any injury or loss caused by reason of such arrest or of his detention in jail during the pendency of the suit.

Article 202 of the Digest.

Provisions of *The Code of Civil Procedure* as to attachment before judgment to apply to suits for arrears of rent.

180. The provisions of section 483 to 491 (inclusive) of *The Code of Civil Procedure,* relating to attachment before judgment and compensation for improper attachments, shall be applicable to all such suits as are mentioned in clause (1) of section 165: provided that, in a suit for the recovery of arrears of rent due on account of a tenure, under-tenure or occupancy holding to which the provisions of section 64 are applicable, no such attachment before judgment shall be directed unless the plaintiff can satisfy the Court that such arrears, together with interest

and costs of the suit, are not likely to be satisfied by the sale proceeds of such tenure, under-tenure, or occupancy holding.

See Article 111 of the Digest.

Standing crops, &c., attached may be reaped, gathered, and stored by defendant, or if defendant neglect by plaintiff.

181. Standing crops and other ungathered products, which have been attached under section 180 may, notwithstanding such attachment, be reaped and gathered by the defendant, and may be stored in such granaries or other places as are commonly used by him for the purpose. If the defendant neglects to do so, the plaintiff may cause such crops or products to be so reaped or gathered and may store them in such granaries or places as aforesaid, or in some other convenient place in the neighbourhood.

See C. C. P., s. 498.

Ad interim sale of crops or products which cannot be kept without deterioration.

The Court may, on the application of any party to the suit, order the sale by any person named in such order, and in such manner and on such terms as it thinks fit, of any such crops or products which cannot be stored and kept without deterioration or loss.

Article 214 of the Digest.

Provisions as to the summoning and attendance of witnesses.

182. The following provisions of *The Code of Civil Procedure* relating to the summoning and attendance of witnesses shall be applicable to all suits instituted and tried under the provisions of this Chapter, that is to say—

Section 159, as to summons to attend to give evidence or produce documents:

Section 160, as to expenses of witnesses being paid into Court on applying for summons, and as to the scale of such expenses.

Section 161, as to tender of expenses to witnesses:

Section 162, as to procedure where insufficient sum is paid in, and where witness is detained more than one day:

Section 163, as to time, place and purpose of attendance being specified in the summons:

Section 164, as to summons to produce document:

Section 165, as to power to require persons present in Court to give evidence:

Section 166, as to the manner of serving summons:

Section 167, as to the time for serving summons:

Section 168, as to attachment of property of absconding witness.

Section 169, as to withdrawal of attachment if witness appear:

Section 170, as to procedure, if witness fails to appear:

Section 171, as to Court of its own accord summoning strangers to suit as witnesses:

Section 172, as to persons summoned to give evidence being bound to attend:

Section 173, as to when such persons may depart:

Section 174, as to consequence of non-attendance, and of refusal to give evidence or produce documents:

Section 175, as to procedure when witness absconds:

Section 176, as to when persons are not bound to attend in person to give evidence:

Section 177, as to consequence of refusal of party to give evidence when called on by the Court: and

Section 178, as to rules relating to witnesses being applicable to parties summoned.

Appearance of Parties.

Provisions as to the appearance of the parties and consequence of non-appearance.

183. The following provisions of *The Code of Civil Procedure,* relating to the appearance of the parties and the consequences of non-appearance, shall be applicable to all suits instituted and tried under this Chapter, that is to say—

Section 96, as to appearance of parties on day fixed in summons for defendant to appear and answer:

Section 97, as to dismissal of suit where summons not served in consequence of plaintiff's failure to pay the fee for issuing it:

Section 98, as to dismissal of suit if neither party appear: Article 203 of the Digest.

Section 99, as to its being in such case competent to plaintiff to bring a fresh suit, or to Court to restore the suit to the file:

Section 100, as to the procedure, if plaintiff only appears: Article 205 of the Digest.

Section 101, as to the procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance: Article 206 of the Digest.

Section 102, as to the procedure where defendant only appears: Article 204 of the Digest.

Section 103, as to decree by default against plaintiff being a bar to a fresh suit:

Section 105, as to the procedure in case of non-attendance of one or more of several plaintiffs:

Section 106, as to the procedure in case of non-attendance of one or more of several defendants:

Section 107, as to the consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person:

Section 108, as to setting aside a decree *ex parte* against a defendant: and

Section 109, as to no decree being set aside without notice to opposite party.

Defendant may file written statement of defence. No other written statement, unless called for by the Court.

184. The defendant may, if he desires to do so, file a written statement of his defence. No other written statement shall be filed by either of the parties or received by the Court: provided that the Court may at any time call for a written statement and fix a time for presenting the same. *See* Article 208 of the Digest.

Provisions as to payment of money into Court and interest on money so paid in, and as to set-off.

185. The following provisions of *The Code of Civil Procedure* as to payment of money into Court shall be applicable to all suits instituted and tried under the provisions of this Chapter, that is to say,— *See* Articles 170, 171 and 219 of the Digest

Section 376, as to deposit by defendant of amount in satisfaction of claim:

Section 377, as to notice of deposit to plaintiff:

Section 378, as to interest on sum deposited not being allowed to plaintiff after receipt of notice:

Section 379, as to procedure where plaintiff accepts deposit as satisfaction in part or in full: and

Section 111, as to set-off of ascertained sum legally recoverable.

Court may direct a local investigation.

186. The Court may of its own motion or upon the application of either party to the suit direct a local investigation in any case in which it deems fit. The provisions of sections 392, 393, 397, 398, 399 and 400 of *The Code of Civil Procedure* shall be applicable to every such investigation.

C. C. P., s. 155.

Judgment at once, if either party fails without sufficient reason to produce his evidence.

187. If either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment.

Adjournments.

Article 212 of the Digest.

Hearing of suit may be adjourned in what cases.

188. The hearing of the suit may be adjourned to future day to be named in the order of adjournment in the following cases, that is to say,—

(1) when either party is not present in person, and his pleader or the person mentioned in clause (*c*) of section 172 is unable to answer a material question relating to the case, which the Court is of opinion that the party ought to answer and is likely to be able to answer if present in person:

(2) when the Court, after proceeding as provided in section 191, is of opinion that the parties are at issue upon some question upon which it is necessary to hear further evidence:

Article 215 of the Digest.

(3) when either party for sufficient reason, which shall be recorded by the Court, requires time for the production of evidence or for any other purpose.

Costs of adjournment.

In case (1) the Court shall direct the party to appear on the day to which the hearing is adjourned. In case (2) the Court shall frame an issue for trial at the adjourned hearing. In all cases the Court shall make such order as it sees fit with respect to the costs of the adjournment:

C. C. P., s. 56.

Hearing to be continuous.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

Article 217 of the Digest.

Course to be pursued, if parties fail to appear or produce their evidence at the adjourned hearing.

189. The provisions of section 157 of *The Code of Civil Procedure* as to the course to be pursued if the parties fail to appear on the day to which the hearing is adjourned, and of section 158 of the same Code as to the Court proceeding to decide the suit notwithstanding that either party fails to produce his evidence shall be applicable to all suits instituted and tried under the provisions of this Chapter.

The Hearing.

Articles 208 and 209 of the Digest. Sections 117, 118 and 128 of C. C. P.

When both parties present Court to ascertain and record whether each admits or denies the allegations of fact and documents of the opposite party.

190. When both parties appear, in the manner directed in the summons or subsequently by the Court, upon the day appointed for the hearing or adjourned hearing, the Court shall—

(1) ascertain from the defendant or his pleader

(*a*) whether he admits or denies the

allegations of fact made in the plaint; (*b*) when he has not filed a written statement or the statement filed by him is insufficient, what allegations of fact he makes in reply to the plaint:

(2) ascertain from the plaintiff or his pleader, whether he admits or denies the allegations of fact made by the defendant:

(3) ascertain from each party or his pleader whether he admits or denies the genuineness of any document produced by the opposite party.

The Court shall record such admissions and denials.

Oral examination of party or person able to answer material question.

C. C. P., sections 118, 119. Digest, Articles 208 and 209.

191. The Court may then examine orally any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit, by whom such party or his pleader is accompanied; and may, if it thinks fit, put in the course of such examination questions suggested by either party.

Substance of examination to be reduced to writing and form part of the record.

The substance of such examination shall be reduced to writing by the Judge and shall form part of the record.

Witnesses to be examined in open Court in presence and hearing of Judge.

C. C. P., section 181.

192. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge.

Evidence of witnesses in what manner to be recorded.

New, but see C. C. P., section 189

It shall not be necessary to take down such evidence in writing at full length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of what he deposes, sufficient to give the gist and substance of his evidence. Such memorandum shall be written by the Judge with his own hand and in his own language, or, if English is not his own language and he is able to make such memorandum in English, then in the English language. It shall further be signed by him and shall form part of the record.

Judge, rendered unable to make memorandum, to cause it to be made from his dictation.

C. C. P., section 190.

If the Judge be rendered unable to make a memorandum as above required, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court. Every memorandum so made shall form part of the record.

Some provisions of *The Code of Civil Procedure* as to mode of recording evidence made applicable.

193. The following provisions of *The Code of Civil Procedure* shall be applicable to all suits tried under the provisions of this Chapter, that is to say—

Section 186, as to any particular question and answer being taken down:

Section 188, as to remarks upon the demeanour of witnesses:

Section 191, as to power to deal with evidence taken down by Judge removed before conclusion of suit; and

Section 193, as to power of Court to recall and examine a witness.

See Digest, Article 211.
C. C. P., s. 198.

Judgment when to be pronounced. Provisions of *Code of Civil Procedure* applicable thereto.

194. After proceeding in accordance with the provisions of sections 190, 191, 192 and 193, after considering the documents admitted or proved on behalf of each party, and after hearing any arguments which may be addressed to it by the parties or their pleaders, the Court shall pronounce judgment in open Court usually at once, but, if this is not possible, then on some future day of which due notice shall be given to the parties or their pleaders. The following provisions of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the Chapter, that is to say—

Section 199, as to power to pronounce judgment written by Judge's predecessor:
Section 200, as to the language of the judgment:
Section 201, as to translation of the judgment:
Section 202, as to dating, signing, and correcting the judgment:
Section 203, as to contents of judgments of Courts other than Courts of Small Causes:
Section 219, as to judgment directing by whom costs are to be paid:
Section 220, as to power of Court in the matter of costs:
Section 221, as to costs being set off against any sum admitted or found to be due: and
Section 222, so much only as relates to interest on costs.

Provisions as to the decree, its contents, &c.

195. (*a*.) The following provisions of *The Code of Civil Procedure* shall be applicable to the decree, that is to say—

Section 205, as to the date of the decree, and the Judge signing it:
Section 206, as to the contents of the decree, and power to amend it:
Section 210, as to payment by instalments: and

Section 216, as to a set-off.

Interest on amount of decree.

(*b*.) A decree for money may direct that the amount decreed shall carry interest *not exceeding* six per centum per anum until such amount is realised.

Decrees in certain suits describe the land.

(*c*.) A decree in any of the suits mentioned in clause 1, 2, 3 or 5 of section 165 shall contain the particulars mentioned in clause (*g*) of section 167.

Decree to show separately arrears decreed in respect of each tenure, under-tenure, or occupancy holding liable to sale for its own arrears.

(*d*.) A decree for arrears of the rent of a tenure, under-tenure, or occupancy holding, and also for arrears of the rent of any other tenure, under-tenure, or occupancy or other holding, shall show separately the arrears decreed in respect of each tenure, under-tenure, or occupancy holding to which the provisions of section 64 are applicable.

C. C. P., s. 217.

Parties entitled to certified copies of judgment and decree.

196. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court and at their expense.

Execution of Decrees.

General Provisions.

Application for execution by whom to be made—to be in writing unless made when judgment is pronounced, in which case it may be made verbally.

See Article 223 of the Digest.

197. Application for execution shall be made by the decree-holder or his pleader. Such application shall be in writing unless it is made at the time when judgment is pronounced, in which case it may be made verbally, subject, however, to the provisions of section 201.

Provisions of *The Code of Civil Procedure* applicable to the execution of decrees in suits under this Chapter.

198. The following provisions of *The Code of Civil Procedure* shall be applicable, so far as they are relevant, to the execution of decrees in suits instituted and tried under the provisions of this Chapter, that is to say—

Section 223, as to the Court by which the decree may be executed:

Section 224, as to the procedure when the Court desires that its own decree shall be executed by another Court:

Section 225, as to such other Court filing without proof the copies of decree, &c., transmitted:

Section 226, as to execution of the decree by the Court to which it is sent:

Section 227, as to execution by High Court of decree transmitted by other Court:

Section 228, as to powers of Court to which decree is sent for execution, and as to appeal from orders passed in execution:

Section 239, as to Court to which decree is sent staying execution:

Section 240, as to requiring security from, or imposing conditions on, judgment-debtor in such cases:

Section 241, as to liability of judgment-debtor or his property discharged under section 239 to be re-taken:

Section 242, as to order of Court which made decree or of Appellate Court being binding on Court to which decree sent:

See Article 172 of the Digest.

Section 230, clause 2, as to the discretion of the Court to refuse execution at the same time against person and property:

Section 231, as to application for execution by joint decree-holder:

Sections 232 and 233, as to application for execution by transferee of decree, but only when such transferee is also the transferee of the decree-holder's interest in the tenure, under-tenure, holding or land for arrears of the rent of which such decree has been passed:

Section 234, as to application for execution against representatives of deceased judgment-debtor:

Section 243, as to stay of execution pending suit between decree-holder and judgment-debtor:

Section 244, as to questions to be decided by Court executing decree:

Section 246, as to cross decrees;

Section 247, as to cross claims under the same decree:

Article 225 of the Digest.

Section 248, as to notice in certain cases to show cause why decree should not be executed:

Article 224 of the Digest.

Section 249, as to procedure after issue of notice:

Section 250, as to when warrant is to issue:

Section 251, as to date, signature, seal, delivery and time for return of warrant:

Section 252, as to decree against representative of deceased for money to be paid out of deceased's property:

Section 253, as to decree against surety:

Section 254, as to execution of decrees for money, but subject to the provisions of section 64 of this Act:

Section 257, as to modes of paying money under a decree:

Section 257A, as to agreements to give time to judgment-debtor and for satisfaction of judgment-debt: and

Section 258, as to payment to decree-holder.

Article 226 of the Digest. Section 263, C. C. P.

Mode of executing decree for ejectment of ryot or for restoring ryot to possession.

199. If the decree be for the ejectment of a ryot from land, or for restoring a ryot to the possession of land, such decree shall be executed by delivering the possession of such land to the party to whom it has been adjudged by the decree, or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate such land.

Article 227 of the Digest. Section 264, C. C. P.

Mode of executing decree for ejecting, or restoring to possession a tenure-holder, under-tenure-holder, or other person in possession of land occupied by tenant.

200. If the decree be for the ejectment of a tenure-holder, under-tenure-holder, or other person from land in the occupancy of a tenant or other person entitled to occupy the same, or for restoring a tenure-holder, under-tenure-holder, or other person to the possession of land in the occupancy of a tenant or other person entitled to occupy the same, such decree shall be executed by affixing a copy of the execution-warrant in some conspicuous place on the land, and by proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree:

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

Procedure for the sale of tenures, under-tenures, and holdings in execution of decrees for their own rent.

See section 64 of this Bill.

Form of application for execution of a decree for arrears of rent of a tenure, under-tenure, or occupancy holding.

201. When a decree has been made wholly or partly for arrears of rent due for a tenure, under-tenure, or occupancy holding, the first application for executing such decree in respect of such arrears shall, if in writing, contain, and, if made orally, be supplemented as soon as convenient by a written statement containing the following particulars, that is to say—

(*a*) the number of the suit;

(*b*) the names of the parties;

(*c*) the date of the decree;

(*d*) the amount of rent decreed;

(*e*) the amount of costs decreed;

(*f*) whether any appeal has been preferred from the decree;

(*g*) a sufficient description of such tenure, under-tenure, or occupancy holding, containing the area and boundaries, as far as known;

(*h*) the annual rent of such tenure, under-tenure, or occupancy holding.

Copy of entry in register prescribed by section 54, to be filed with application.

In any case in which such register as is prescribed by section 54 is kept, there shall with such application or written statement be filed a copy of so much of such register as relates to such tenure, under-tenure, or occupancy holding.

If application in proper form, Court shall direct sale of tenure, under-tenure or occupancy holding. If not in proper form, may be amended or rejected.

Article 151 of the Digest.

202. When such application or written statement has been presented in due form, the Court shall make an order for the sale of such tenure, under-tenure, or occupancy holding. If such application is not in due form, the Court may allow it to be amended or may reject it without prejudice to a fresh application in proper form.

Notice of sale of tenure, under-tenure, or occupancy holding how to be published.

Article 152 of the Digest.

203. (*a*.) When an order for the sale of such tenure, under-tenure, or occupancy holding has been made under section 202, notice of the sale so ordered shall be given in the following manner, that is to say—

(1) by posting up in the Court-house of the Court aforesaid a notification containing the particulars specified in section 201, and announcing that such tenure, under-tenure, or occupancy holding will be sold on a date to be stated therein:

(2) by posting up a similar notification in the kachahri of the Collector of the District:

(3) when the decree is not executed by the District Judge, by posting up a similar notification in the Court-house of the District Judge:

(4) by posting up a similar notification on some conspicuous place upon the land of such tenure, under-tenure, or occupancy holding:

(5) by posting up a similar notification upon some conspicuous place in the town or village nearest to which such tenure, under-tenure, or occupancy holding is situate.

Notification to state that sale shall be subject to incumbrances if sum bid satisfy decree, otherwise that sale may be made free of incumbrances.

(*b*.) Such notification shall further announce that such tenure, under-tenure, or occupancy holding shall first be put up to auction, subject to the registered incumbrances specified in section 206, and shall be sold subject to such incumbrances, if the sum bid is sufficient to liquidate the amount of the decree and costs: and that otherwise it may, if the decree-holder so desire, be sold free of all incumbrances *on a subsequent day of which due notice will be given.*

Date of the sale how to be fixed.

(*c*.) The date of the sale shall be so fixed that it shall be not less than twenty days from the date on which the notification is posted up as required by paragraph (1) of clause (*a*) and shall not fall on a holiday.

Sale to be stayed only by payment into Court of amount of decree with costs; or by confession of satisfaction by decree-holder.

Or shall we say, before it is knocked down.

204. The amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, may be paid into Court at any time before such tenure, under-tenure, or occupancy holding is put up

for sale and the bidding commences. The sale shall not be stayed unless such amount is so paid into Court, or unless the decree-holder makes an application in writing to this effect on the ground that the decree has been satisfied out of Court. In any such case no application for any further execution of the decree shall be received.

See Articles 153 and 154 of the Digest.

What persons may pay the amount of the decree and costs into Court so as to stay the sale.

205. The amount of the decree and costs mentioned in section 204 may be paid into Court by any of the following persons, that is to say—

(*a*) by the judgment-debtor:

(*b*) by any one who alleges that he and not the judgment-debtor is the duly registered owner of the tenure, under-tenure, or occupancy holding notified for sale, and produces a copy of such register as is prescribed by section 54 in support of such allegation:

(*c*) by any one who has an interest in, or lien upon, such tenure, under-tenure, or occupancy holding:

(*d*) in the case of a tenure, under-tenure, or occupancy holding being notified for sale, by any one having an interest which would be endamaged by the sale of such tenure, under-tenure or occupancy holding free of incumbrances.

Article 35 to the Digest.

Person paying money into Court under clause (*c*) or (*d*) may sue defaulter for the same as money lent to him.

Any person who pays money into Court under clause (*c*) or (*d*) shall be entitled to sue for the amount so paid as money lent, and to recover the same from the person in consequence of whose default to pay rent *or in consequence of whose wrongful act* the tenure, under-tenure or occupancy holding was notified for sale.

L. R. 1, I. A. 189.

Sections 138 and 139 applicable in the case of certain tenures.

In the case of a tenure in respect of which the right of selling or bringing to sale has been specially reserved by stipulation in the engagements interchanged on the creation thereof, the provisions of sections 138 and 139 shall further be applicable.

Tenure, under-tenure, or holding to be first put up to sale subject to incumbrances, and sold, if bidding cover amount of decree and costs.

206. Upon the day appointed for the sale, such tenure, under-tenure, or occupancy holding shall first be put up to auction, subject to incumbrances, that is to say, so as that the purchaser shall not be entitled to avoid any incumbrance created by the judgment-debtor or his predecessor in title; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs including the costs of sale, such tenure, under-tenure, or occupancy holding shall be sold subject to such incumbrances.

Meaning of "incumbrances."

Explanation.—The term "incumbrances" in this section means and includes every incumbrance, lien, sub-lease, or subordinate interest which the defaulting holder of the tenure, under-tenure, or occupancy holding was by law competent to create in derogation of his own interest, and which was created by an instrument in writing duly registered, subject to this condition that a copy of such instrument has been served upon the person to whom the rent of such tenure, under-tenure, or holding is payable. Every registering officer shall, when required, cause any such copy to be served on any such person in the manner provided in Part VII of *The Indian Registration Act*, 1877, for the service of summons. In the case of incumbrances created before the commencement of this Act by instruments in writing duly registered under the law applicable thereto, such copy may be served at any time within six months after such commencement. The purchaser at a sale under this section shall be entitled to proceed within one year *after he has knowledge of the same* to avoid and annul every incumbrance, lien, sub-lease, or subordinate interest other than those above defined and specified.

If bidding does not cover amount of decree and costs, and decree-holder desires a sale free of incumbrances, such sale may be ordered upon an adjourned date.

207. (*a*). If the bidding does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that such tenure, under-tenure, or occupancy holding shall be sold free of incumbrances, the officer holding the sale shall at his request withdraw such tenure, under-tenure, or occupancy holding from the auction, and shall publicly intimate that it will, *unless the said amount be paid into Court,* be put up to auction and sold free of incumbrances upon some future sale-day not less than fifteen or more than thirty days afterwards. A notification to the same effect shall be posted up with all convenient despatch on some conspicuous place upon the land of such tenure, under-tenure, or occupancy holding. Upon such latter mentioned sale-day such tenure, under-tenure, or occupancy holding shall be put up to auction and sold free of incumbrances.

If no bid, decree-holder to be required to bid.

(*b*.) If no bid is made for such tenure, under-tenure, or occupancy holding when put up to auction under clause (*a*), the decree-holder shall be required to bid, and if he refuses to do so he shall not be entitled to proceed to execute the decree against the person or other property, moveable or immoveable, of the judgment-debtor.

Rules applicable to sales under section 206 or section 207.

Article 242 of the Digest.

208. The following rules shall be applicable to every sale made under section 206 or section 207:—

(1) The sale shall be by auction upon the day *or adjourned day* appointed and notified as provided in section 203, *or clause (a) of section 207, or, if this be not convenient, upon the following open day.* The decree-holder and all persons other than the defaulter may bid.

Article 243 of the Digest.

(2) The tenure, under-tenure, or occupancy holding shall be knocked down to the highest bidder, and he shall be required to deposit immediately twenty-five per centum of the amount of his bid. In default of such deposit, the tenure, under-tenure, or occupancy holding shall be put up again and sold forthwith upon the same day, or, if this be not convenient, upon the following open day; *and if the price realized is less than the amount bid by the person who failed to deposit twenty-five per centum of his bid, the difference may be recovered from such person under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.*

Article 244 of the Digest.

(3) The balance of the purchase-money shall be paid up before sunset of the eighth day from that

on which the sale took place, such sale-day being reckoned as one of the eight, or, if the eighth day be a holiday, then on the first open day. If such balance be not so paid, the deposit shall be forfeited to Government; the tenure, under-tenure, or occupancy holding shall be re-sold under clauses (1) and (2); the purchaser, who failed to make good the balance as aforesaid, shall forfeit all claim to such tenure, under-tenure, or occupancy holding, or to any part of the sum for which it may be subsequently sold; and if such sum be less than the price bid by such purchaser, the difference may be recovered from him under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.

Articles 156 and 245 of the Digest.

Code of Civil Procedure, s. 316.

Article 245 of the Digest. Consider whether a certain time, say three months, should not be fixed for making this application.

Sale to be confirmed when price paid. Certificate to be given to the purchaser. Officer to be deputed to put him in possession.

209. (*a.*) When the whole of the purchase-money has been paid, the Court shall confirm the sale if there be no valid reason to the contrary; and shall grant a certificate stating the name of the person who at the time of sale is declared to be the purchaser, and the date of such sale. Such purchaser shall, if required, produce and show such certificate when applying for registration under the provisions of section 46. If the purchaser makes application to such effect, and if he deposits the necessary costs, the Court shall depute an officer to put him in possession of the tenure, under-tenure, or occupancy holding, and to notify the fact of the purchase to the ryots and other persons whom it may concern.

Benami purchaser not recognized.

(*b.*) The provisions of section 317 of *The Code of Civil Procedure* shall apply to every certified purchaser under clause (*a*).

Article 155 of the Digest.

Purchaser under clause (*a*) of section 207 to acquire tenure, under-tenure or occupancy holding free of all incumbrances not made under written authority of landlord.

210. The person who purchases a tenure, under-tenure, or occupancy holding under the provisions of clause (*a*) of section 207 shall be entitled to proceed within one year to avoid and annul all incumbrances imposed thereupon by any holder thereof, his representatives or assignees, unless in the case of incumbrances allowed by law, the right of making the same was expressly granted by the written engagement under which the holder was originally let into possession, or by the subsequent written authority of the person so letting into possession, his representatives or assignees:

Proviso. Khoodkasht ryots or resident and hereditary cultivators may not be ejected.

Provided that no such purchaser may eject *khoodkasht* ryots or resident and hereditary cultivators or cancel *bonâ fide* engagements made with such ryots or cultivators, except it be proved in a regular suit brought by such purchaser for the adjustment of the rent that a higher rent would have been fairly demandable at the time when such engagements were contracted:

Incumbrances may not be avoided, if judgment-debtor or person colluding with him purchase.

Provided also that no such incumbrances may be avoided in any case in which the purchaser is the judgment-debtor or a person acting in fraudulent collusion with him for the purpose of disencumbering the tenure, under-tenure, or occupancy holding.

Purchaser may enhance rents according to law; but may not eject save as provided in this Act.

Subject to these provisions, any such purchaser shall be entitled to proceed under the provisions of this Act to enhance the rent of the ryot's holding land in the tenure, under-tenure, or occupancy holding purchased by him; but no ryot shall be liable to ejectment otherwise than as provided in this Act.

Rules for disposal of the sale proceeds.

211. The following rules shall be observed in disposing of the proceeds of the sale, that is to say,—

Article 246 of the Digest.

Costs of sales to be paid first.

(1) There shall first be paid to the decree-holder the costs incurred by him in bringing the tenure, under-tenure, or occupancy holding to sale.

Amount due under the decree to be next satisfied.

There shall in the next place be paid to the decree-holder the amount due to him under the decree, in execution of which the sale was made.

If balance remains, rent which fell due after the arrears recovered by the decree may be paid therefrom.

(3) If there remains a balance after these sums have been liquidated, there shall be paid to the decree-holder therefrom any rent which may have become due to him for such tenure, under-tenure, or occupancy holding after the date upon which the latest arrear recovered by the decree became due: provided that the decree-holder shall not under this rule recover any rent which he might have included in the suit in which he obtained such decree: and provided also that in no case shall he obtain rent for more than six months after the date of the final decree. If the judgment-debtor dispute the decree-holder's right to receive such rent, the Court shall determine such dispute, and such determination shall have the force of a decree.

New.

Balance, if any, after liquidating such rent, to be paid to the judgment-debtor.

(4) If there remains a balance after the liquidation of the rent mentioned in clause 3, such balance shall be paid to the judgment-debtor upon his application.

Article 246 of the Digest.

Sale may be set aside only if material irregularity and substantial injury are proved.

212. (*a*). The judgment-debtor may apply to the Court to set aside the sale on the ground that there was a material irregularity in publishing or conducting it, and that he has sustained substantial injury by reason of such irregularity: and the Court may set aside such sale, if material irregularity and such substantial injury are proved, and not otherwise.

Articles 247 and 248 of the Digest, and see Code of Civil Procedure, s. 311.

Consider question of appeal.

Order setting aside sale to direct refund of the purchase money, and may be enforced as a money decree.

(*b*.) In any case in which a sale is ordered to be set aside, the order shall direct that the purchase money be refunded to the purchaser with or without interest, as the Court in its discretion may see fit; and such order may be enforced by the Court as a decree for money against any person into whose hands such purchase money or any portion thereof may have passed, if such person have been served with notice of the application made under clause (*a*).

Article 249 of the Digest. Code of Civil Procedure, s. 315.

When judgment-debtor obtained possession, Court may take an account.

(c.) [If such purchaser has received possession of the tenure, under-tenure or occupancy holding, the Court may take an account of any rent paid by him to the landlord of such tenure, under-tenure or occupancy holding, and also of any rents or profits received by him, and may make an order directing the payment of any balance found thereupon to be due to the person entitled to receive the same. Such order shall have the force of a decree: provided that the taking of such account shall not be permitted to delay the restoration of the judgment-debtor to possession.]

Articles 157 and 172 of the Digest; section 354, C. C. P.

Cases in which decree may be enforced by attachment and sale of movable and immovable property and by arrest and imprisonment of judgment-debtor.

213. In the following cases, that is to say,

(1.) When a tenure, under-tenure or occupancy holding has been sold in execution of a decere for arrears of rent due in respect thereof, and the amount of such decree has not been satisfied by the proceeds of such sale:

(2) when a decree has been made for arrears of rent due in respect of land not forming a tenure, under-tenure or occupancy holding:

(3) when a decree has been made for damages on account of the legal exaction of rent or cesses, or on account of the refusal of receipts:

(4) when a decree has been made for costs; the decree may be enforced by any or all of the following methods, that is to say, (a) by the attachment and sale of the movable property of the judgment-debtor; (b) by the attachment and sale of the immovable property of the judgment-debtor; (c) by the arrest and imprisonment of the judgment-debtor.

Attachment and sale of movable and immovable property.

Provisions of *The Code of Civil Procedure* as to attachment and sale of movable and immovable property applicable to the execution of decrees in suits instituted and decided under this Chapter.

214. The following sections of *The Code of Civil Procedure* shall be applicable to the execution of decrees in suits instituted and decided under the provisions of this Chapter, that is to say—

Section 236, as to application for attachment of immovable property being accompanied with inventory:

Section 237, as to particulars when application is for attachment of immovable property:

Section 238, as to when application must be accompanied by extract from Collector's register:

So much of section 245 as provides that, in case of a decree for money, the value of the property attached shall as nearly as may be correspond with the amount of the decree:

Section 266, as to property liable to attachment and sale in execution of a decree:

Section 267, as to power of Court to summon and examine persons as to property liable to be seized:

Section 268, as to attachment of debt, share and other property not in possession of judgment-debtor:

Section 269, as to attachment of movable property in possession of the defendant, and rules for maintenance of attached live stock:

Section 270, as to attachment of negotiable instruments:

Section 271, as to seizure of property in houses and zenanas:

Section 272, as to attachment of property deposited in Court or with Government officer:
Section 273, as to attachment of decree for money, and of other decrees, and as to decree-holders giving information:
Section 274, as to attachment of immovable property:
Section 275, as to withdrawal of attachment after satisfaction of decree:
Section 276, as to private alienation of property after attachment being void:
Section 277, as to Court directing coin or currency notes attached to be paid to party entitled:
Section 278, as to investigation of claims to, and objections to attachment of, attached property and postponement of sale:

See Articles 237, 238 and 239 of the Digest.

Section 279, as to evidence to be adduced by claimant:
Section 280, as to release of property from attachment:
Section 281, as to disallowance of claim to release of property attached:
Section 282, as to continuance of attachment subject to claim of incumbrancer:
Section 283, as to saving of suits to establish right to attached property:
Section 284, as to power of Court to order property attached to be sold, and proceeds to be paid to person entitled:

See Article 240 of the Digest.

Section 285, as to property attached in execution of decrees of several Courts:
Section 286, as to sales by whom conducted and how made:
Section 287, as to proclamation of sales by public auction.
Section 288, as to indemnity of Judges:
Section 289, as to mode of making proclamation:
Section 290, as to time of sale:
Section 291, as to power to adjourn sale, and stop sale on tender of debt and costs, or on proof of payment:
Section 292, as to officers concerned in execution sales not bidding for, or buying property sold:
Section 293, as to defaulting purchaser being answerable for loss by re-sale:
Section 294, as to decree-holder not bidding for, or buying, property without permission, and as to amount of decree being taken as payment when he purchases:
Section 295, as to proceeds of execution-sale being divided rateably amongst decree-holders, with proviso where property is sold subject to mortgage:
Section 296, as to rules concerning negotiable securities and shares in public companies:
Section 297, as to payment for movable property sold:
Section 298, as to sale of moveable property not being vitiated by irregularity, but person injured being competent to sue:
Section 299, as to delivery of movable property actually seized to purchaser:
Section 300, as to delivery of movable property to which judgment-debtor is entitled subject to lien:
Section 301, as to delivery of debts and of shares in public companies:
Section 302, as to transfer of negotiable instruments and shares:

Section 303, as to vesting order in case of other immovable property:

Section 304, as to sales of immovable property:

Section 306, as to deposit by purchaser of immovable property:

Section 307, as to time for payment in full:

Section 308, as to procedure in default of payment:

Section 309, as to notification on re-sale of immovable property:

Section 310, as to co-sharer of a share of undivided immovable property having preference in bidding:

Section 311, as to sale of immovable property not being set aside unless there be (1) material irregularity, and (2) substantial injury:

Section 312, as to effect of objection being allowed or disallowed:

Section 313, as to power to apply to set aside the sale:

Section 314, as to confirmation of sale:

Section 315, as to return of price to purchaser if sale be set aside:

Section 316, as to certificate to perchaser of immovable property:

Section 317, as to benami purchaser not being recognized:

Section 318, as to delivery of immovable property in the occupancy of judgment-debtor:

Section 319, as to delivery of immovable property in the occupancy of a tenant:

Section 326, as to Court having power to authorize Collector to provide for satisfaction of decree otherwise than by sale of immovable property:

Section 327, as to Local Government making rules for sales of land in execution of decrees for money:

Section 328, as to procedure in case of obstruction to execution of decree:

Section 329, as to procedure in case of obstruction by judgment-debtor or at his instigation:

Section 330, as to procedure when obstruction continues:

Section 331, as to procedure in case of obstruction in good faith by claimant other than judgment-debtor:

Section 332, as to procedure in case of person dispossessed of property disputing right of decree-holder to be put into possession:

Section 333, as to orders passed under sections 331 and 332 having the force of decrees and being subject to appeal:

Section 334, as to resisting or obstructing purchasers in obtaining possession of immovable property: and

Section 335, as to obstruction by a claimant other than defendant.

Of Arrest and Imprisonment.

Order for commiting to, or detaining in, jail a judgment-debtor, arrested before judgment, who fails to satisfy the decree.

215. If the judgment-debtor, having given security for his appearance under the provisions of section 177, is present before the Court, or if he has been committed to jail under the provisions of the same section, the Court may, upon the application of the decree-holder and upon his depositing subsistence-money in accordance with the provisions of section 339 of *The Civil Code of Procedure*, make an order, subject to the provisions of section 216, that such judgment-debtor, unless he

at once pays the amount of the decree, be committed to, or detained in, jail. If no such application is made and the judgment-debtor is in jail he shall be released upon the expiry of three clear days after judgment being pronounced.

Execution may be had against surety, who fails to deliver judgment-debtor into custody.

216. If the judgment-debtor, having given security for his appearance, is not present when judgment is pronounced and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against such surety.

Certain sections of *The Code of Civil Procedure* as to arrest and imprionment applicable to the execution of decrees under this Chapter.

217. The provisions of the following sections of *The Code of Civil Procedure* shall be applicable to the execution of decrees in suits instituted and decided under the provisions of this Chapter, that is to say,—

Section 336, as to place of judgment-debtor's imprisonment, arrest in houses, and release upon payment:

Section 337, as to warrant of arrest directing judgment-debtor to be brought up;

Section 338, as to scales of subsistence allowances:

Section 339, as to deposit of judgment-debtor's subsistence-money:

Section 340, as to subsistence-money being added to the amount of the decree:

Section 341, as to the release of the judgment-debtor:

Section 342, as to the term of imprisonment: and

Section 343, as to endorsements on warrants.

Miscellaneous provisions of The Code of Civil Procedure applicable to suits under this Chapter.

Certain Chapters and sections of *The Code of Civil Procedure* applicable generally to suits under this Chapter.

218. The following chapters and sections of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the provisions of this Chapter, that is to say,—

Chapter XX, as to insolvent judgment-debtors:

Chapter XXI, as to the death, marriage, and insolvency of parties:

Chapter XXII, as to the withdrawal and adjustment of suits:

Chapter XXV, as to commissions, except section 396:

Chapter XXVII, as to suits by or against Government or public officers:

Chapter XXIX, as to suits by and against corporations and companies:

Chapter XXX, as to suits by and against trustees, executors and administrators:

Chapter XXXI, as to suits by and against minors and persons of unsound mind:

Chapter XXXII, as to suits by and against military men: and

Chapter XLIX, miscellaneous, sections 640, 641, 642, 643, 645, 648, 651 and 652.

Of Appeals.

Appeals from original and appellate decrees to be governed by the provisions of *The Code of Civil Procedure.*

Jurisdiction of the Bengal Council to enact this section may be derived from clause 2 of section 4 of *The Code of Civil Procedure* as amended by Act XII of 1879; and read clause 4 of section 6 of Act XI of 1865, with sections 15 and 52 of the same Act.

219. Subject to the provisions of section 157 of this Act, the provisions of Chapter XLI of *The Code of Civil Procedure* as to appeals from original decrees, and the provisions of Chapter XLII of the same Code as to appeals from appellate decrees, shall be applicable to all suits instituted and decided under the provisions of this Chapter.

No appeal in suits for arrears of rent in which the amount claimed does not exceed ten rupees.

220. Notwithstanding anything contained in section 219, no appeal shall lie in any suit brought for arrears of rent, in which the amount claimed does not exceed ten rupees, and in which no question of right to enhance or vary the rent of a tenant has been determined, when such suit has been tried and decided by a munsif or other judicial officer specially empowered by the Lieutenant-Governor of Bengal to exercise final jurisdiction under this section. The District Judge may call for the record of any case so decided, and if he is satisfied that a failure of justice has been caused by a substantial error, defect or irregularity in the proceedings or in the decision, he may pass such orders as shall to him appear proper. Such orders shall be final.

District Judge to have power of revision.

Appeals from orders governed by the provisions of *The Code of Civil Procedure. Provisos.*

221. The provisions of Chapter XLIII of *The Code of Civil Procedure* as to appeals from orders shall be applicable to all suits instituted and tried under the provisions of this Chapter: provided that no appeal shall lie against the order of a District or Additional Judge in any such suit as is mentioned in section 220.

Review of judgment.

Review of judgment to be regulated by the provisions of *The Code of Civil Procedure.*

222. Subject to the provisions of section 158 of this Act, the provisions of Chapter XLVII of *The Code of Civil Procedure* as to review of judgment shall be applicable to all suits instituted and tried under the provisions of this Chapter.

Res Judicata: proviso.

223. The provisions of section 13 of *The Code of Civil Procedure* shall be applicable to all suits instituted and tried under the provisions of this Chapter: provided that the decision in any such suit of a question concerning the title to, or any interest in, immovable property shall not be a bar to the trial of the same question in any suit tried under *The Code of Civil Procedure* and not under the provisions of this Chapter.

Articles 182 and 252 of the Digest.

Discretion to issue process free of charge.

224. If in any case a Civil Court is satisfied that a party is unable to pay the cost of any necessary process in any suit instituted or pending under this Chapter, it may direct such process to be served free of charge.

See Act IV of 1876.

Revenue agent may in Munsif's Court do any act which may be done by a pleader.

225. Anything which may be done by a pleader under the provisions of this Chapter or under any of the provisions of *The Code of Civil Procedure* mentioned herein, may be done in any case instituted in the Court of a Munsif by any such revenue agent as is mentioned in the proviso to section 10 of Act XVIII of 1879.

THE FIRST SCHEDULE.

(See Section 2.)

Number and year.	Subject of Act.	Extent of repeal.
	Regulations of the Bengal Code.	
VIII of 1793 ...	A Regulation for re-enacting, with modification and amendments, the rules for the decennial settlement of the public revenue payable from the lands of zemindars, independent talukdars, and other actual proprietors of land in Bengal, Behar, and Orissa, passed for those Provinces, respectively, on the 18th September 1789, the 25th November 1789, and the 10th February 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805 ...	A Regulation for the settlement and collection of the public revenue in the zillah of Cuttack, including the pergunnahs of Puttespore, Kummardichour, and Bagrae, at present included in the zillah of Midnapore.	Section 7.
V of 1812 ...	A Regulation for amending some of the rules at present in force for the collection of the land revenue.	Sections 2, 3, 4, 26, and 27.
XVIII of 1812	A Regulation for explaining section 2, Regulation V, 1812, and rescinding sections 3 and 4, Regulation XLIV, 1793, and sections 3 and 4, Regulatien L, 1795, and enacting other rules in lieu thereof.	Preamble and sections 2 and 3.
VIII of 1819 ...	A Regulation to declare the validity of certain tenures and to define the relative rights of zemindars and patni talukdars, also to establish a process for the sale of such taluks in satisfaction of the zemindar's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal.	The whole Regulation.
I of 1820 ...	A Regulation for providing that all sales of certain taluks, made answerable by sale for arrears of the zemindar's rent shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described.	The whele Regulation.
XI of 1825 ...	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.
	Acts of the Bengal Council.	
VI of 1862 ...	An Act to amend Act X of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal).	The whole Act.

Number and year.	Subject of Act.	Extent of repeal.
VIII of 1865 ...	An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of rent due in respect thereof.	The whole Act.
IV of 1867 ...	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869 ...	An Act to amend the procedure in suits between landlords and tenants.	The whole Act.
	Acts of the Governor General in Council.	
XXV of 1850 ...	An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII, 1819, and Act IV, 1846.	So much as is unrepealed.
XXXIII of 1850 ...	An Act for amending the forms necessary for the sale of patni tenures in Bengal.	The whole Act.
VI of 1853 ...	An Act relating to summary suits for arrears of rent, to sales of patni taluks and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.	The whole Act.
X of 1859 ...	An Act to amend the law relating to the recovery of rent in the presidency of Fort William in Bengal.	The whole Act.
XI of 1859 ...	An Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency.	In section 55 the words "except distraint."

THE SECOND SCHEDULE.

(*See Section* 59.)

FORM A.

I, A. B., &c., do solemnly declare that I [*or C. D., when the tenant A. B. is not personally cognizant,*] am in possession of [*describe the tenure, under-tenure, holding or land, giving the area and boundaries when possible*] the annual rent of which is [*state amount*], and that such rent was payable to E. F. up to [*date of last payment made*], and that on the [*date on which rent fell due*] there became due in respect of such [*tenure, under-tenure, holding or land*], the sum of , and that no other or further rent is due in respect of such [*tenure, under-tenure, holding or land*], and I further solemnly declare that

[*in case (a) of seciton* 58].

I did on the [*date*] at [*give the name of the mal kachahri or other place where the rent is payable*] in the presence of [*give the names of two persons at least who were present at the tender*] tender the said sum of to [*give the name of the person to whom tender was made, who should be the landlord or his agent having authority to receive or who usually receives the rent*], and that the said would not accept the said sum and give me a receipt for the same. *Or*

[*in case (b) of section* 58]

That the said E. F. died on the [*date*], and that G. H., I. J., and K. L. are his heirs and are coparceners, and they have not appointed a common manager, nor has any such common manager been appointed by the District Judge, and that they were not ready to give me, nor could I obtain from them their joint receipt for the said sum of . *Or*

[*in case (c) of section* 58]

That the said E. F. died on the [*date*] and his estate is claimed by his widow G. H., and also by one I. J., who alleges himself to be the adopted son of the said E. F., but G. H. denies the validity of the said adoption, and that the said G. H. and the said I. J., have each warned me [*or* C. D.] not to pay rent to the other claimant, and I [*or* C. D.] am [or is] in reasonable doubt as to which of the said two claimants is entitled to the rent.

THE THIRD SCHEDULE.

(*See Section* 92.)

Part I.—*Suits.*

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To set aside an award under clause (*b*) of section 84.	One month ...	The date of the award.
2. Under clause (1) of section 145 by an under-tenure-holder for price of interest avoided by sale, or for compensation.	Two months ...	The date of the sale.
3. When a deposit of rent has been made under the provisions of section 58 for the recovery of arrears of rent which fell due before the date of such deposit.	Six months ...	The date of service of notice of the deposit under section 52.
4. Under clause (8) of section 79 to enforce a forfeiture for disclaimer.	Six months ...	The date of the disclaimer.
5. For damages on account of the illegal exaction of rent.	One year ...	The date of the illegal exaction.
6. For damages on account of the extortion of rent by confinement or other duress.	One year ...	The date of the extortion.
7. For damages on account of the excessive demand of rent.	One year ...	The date of the excessive demand.
8. For damages on account of the illegal exaction of any unauthorized cess or impost.	One year ...	The date of the illegal exaction.
9. For damages on account of the refusal of receipts for rent.	One year ...	The date of the refusal.
10. For abatement of rent of tenure-holder, under-tenure-holder or ryot holding at fixed rates under clause (*b*) of section 153.	One year ...	The date of the commencement of the cause which entitles to abatement.
11. For abatement of the rent of a ryot having a right of occupancy on the ground of the area of his holding having been diminished by diluvion.	One year ...	The date of the diminution, or, where it is gradual, the completion thereof. A suit may be instituted at any time while such gradual diminution is going on.
12. For abatement of the rent of a ryot having a right of occupancy on the ground that quantity of land has been proved by measurement to be less than quantity for which rent previously payable.	One year ...	The date of the measurement.
13. For abatement of the rent of a ryot having a right of occupancy on the ground that the value of the produce has been decreased by any cause beyond his power.	One year ...	The date of the operation of such cause *or* the date of the fall in price.
14. For abatement of the rent of a ryot having a right of occupancy on the ground that the productive powers of the land have been decreased by any cause beyond his power.	One year ...	When the operation of such cause becomes known.

PART I.—*Suits,*—continued.

Description of Suit.	Period of Limitation.	Time from which period begins to run.
15. To eject any tenure-holder, under-tenure-holder or ryot on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year ...	The date of the breach.
16. By the purchaser of an estate, tenure or under-tenure, sold for arrears of revenue or rent, to avoid a tenure, under-tenure, or other tenancy or subordinate interest, in any case in which he is entitled to avoid the same.	One year ...	The date after confirmation of the sale upon which such purchaser first has knowledge of the existence of such tenure, under-tenure or other tenancy or subordinate interest.
17. *By ryot against his landlord to recover the possession of a holding from which such ryot has been illegally ejected by such landlord, in any case not governed by section 9 of The Specific Relief Act,* 1877.	*One year* ...	*The date of dispossession.*
18. *By a transferree or successor against a landlord under section 52 to compel him to admit to registry a succession to, or transfer of a tenure, under-tenure or occupancy holding.*	*One year* ...	*The date of the express or implied refusal.*
19. For the recovery of arrears of rent when no deposit of rent has been made under the provisions of section 58.	Three years ...	The last day of the Bengal year, or the last day of the month of Jyet of the Umli or Fusli or Willaiti year in which the arrear claimed became due.
20. *By a tenure-holder or under-tenure-holder against his landlord to recover the possession of a tenure or under-tenure from which such tenure-holder or under-tenure-holder has been illegally ejected by such landlord, in any case not governed by section 9 of The Specific Relief Act,* 1877.	*Three years* ...	*The date of dispossession.*
21. For determination of the conditions of tenancy under section 151.	At any time during the tenancy.	The commencement of the tenancy.
22. For the recovery of money or papers in the hands of an agent, or to compel an agent to account under section 160 or 161.	At any time during the agency or within one year after the determination thereof.	The receipt of the money or papers by the agent.
23. Like suit where person having right to sue has, by means of fraud, been kept from knowledge of the receipt of any such money by the agent, or where fraudulent account has been rendered by agent.	One year ...	The time when the fraud first became known to the person having the right to sue, provided that in no case shall there be allowed more than three years from the termination of the agency.
24. For apportionment of rent under section 63.	At any time during the tenancy.	

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
25. From any decree or order under this Act to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed against.
26. From any order of a Collector under this Act to the Commissioner.	Thirty days ...	The date of the order appealed against.

See 7 W R. Civ. Rul. 186; 21 W. R. 53, 121, 251; and 23 W. R. 460.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
27. Under clause (*a*) of section 212 to have a sale set aside.	Thirty days ...	The date of the confirmation of the sale.
28. Under clause (*c*), section 53, for an order directing a proprietor to receive security tendered by transferree or devisee of a patni tenure.	Three months ...	The date of the express or implied rejection of such security.
29. By a purchaser under clause (*a*) of section 209 to be put in possession of a tenure, under-tenure, or occupancy holding purchased by him.	Three months ...	The date of the confirmation of the sale.
30. For the execution of a decree or order made under this Act, *or any Act repealed by this Act, and* not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree. When the judgment-debtor has by fraud or force prevented the execution of the decree within the three years, the Court may allow a further period not exceeding one year.	Three years ...	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.
31. For the execution of a decree for a sum of money exceeding Rs. 500 calculated as in Article 30.	The time provided by The Indian Limitation Act, 1877.	As provided in The Indian Limitation Act, 1877.

THE REPORT

OF

THE RENT LAW COMMISSION,

WITH

THE DRAFT OF A BILL TO CONSOLIDATE AND AMEND THE LAW OF
LANDLORD AND TENANT WITHIN THE TERRITORIES UNDER
THE ADMINISTRATION OF THE LIEUTENANT-
GOVERNOR OF BENGAL.

VOLUME II.

APPENDIX

CONTAINING THE PROCEEDINGS OF THE COMMISSION AND THE PAPERS
CONSIDERED AND REFERRED TO IN THE REPORT
AND PROCEEDINGS.

CALCUTTA:
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.
1883.

NOTES AND PAPERS CONSIDERED BY THE COMMISSION AND REFERRED TO IN THE REPORT AND PROCEEDINGS.

PAGE.

1. From F. M. Halliday, Esq., Commissioner of Patna, dated 8th March 1879, with report, &c., of the Behar Rent Committee 245
2. The Behar Rent Bill, 1878 289
3. Note by Sir Richard Garth on Mr. Field's Digest 357
4. Minute by Sir Richard Garth, dated 8th January 1880 360
5. Statement of classes of purchasers of Ryot's holdings and small under-tenures under execution sales 365
6. Abstract statement of compulsory sales of holdings under Rs. 1,000 in 1878-79 373
7. Note by Mr. Field on merger 374
8. Note by Mr. Field on the law relating to land used for buildings, &c. 375
9. Note on the rights and status of the cultivating classes by Mr. Mackenzie, dated 6th January 1880 382
10. Note by Mr. Field, dated 13th January 1880, on enhancement, and in reply to Mr. Mackenzie's note of the 6th idem 384
11. Note by Mr. Mackenzie, dated 20th January 1880, on enhancement, in reply to the Hon'ble Mr. Field's note of 13th idem 389
12. Note by Mr. Harrison on ejectment and enhancement, dated 23rd January 1880 398
13. Note on sub-letting the occupancy right by Mr. Harrison, dated 6th March 1880 401
14. Addendum to Mr. Harrison's note, dated 6th March 1880 416
15. Note by Mr. O'Kinealy on enhancement (16th June 1880)... 418
16. Remarks by Mr. Field 454
17. Note on enhancement by Baboo Peary Mohun Mookerjee, dated 18th March 1880... ... 455
18. Note by Mr. Field on enhancement and sub-letting, dated 13th April 1880 458
19. Note by Baboo Peary Mohun Mookerjee, dated 20th April 1880, regarding enhancement and sub-letting 469
20. Note by Mr. Dampier regarding the position of tenure-holders and ryots, dated 11th May 1880 471
21. Note by Baboo Brojendro Coomar Seal on the status of ryots, dated 28th May 1880 ... 473
22. Note by Mr. Mackenzie on enhancement and sub-letting, dated 31st May 1880 474
23. Propositions by the President and Mr. Field for the solution of some unsettled questions ... 476

APPENDIX.

PROCEEDINGS OF THE COMMISSION.

APPOINTMENT OF A COMMISSION TO CONSIDER THE QUESTION OF AMENDING THE RENT LAW OF BENGAL.

No. 832—337 LR, dated Calcutta, the 3rd April 1879.

From—A. MACKENZIE, ESQ., Secy. to the Govt. of Bengal, Revenue Department.

To—The Secy. to the Govt. of India, Dept. of Revenue, Agriculture and Commerce.

THE nature and scope of the Bill "to provide for the more speedy realization of arrears of rent and to amend the law relating to rent," now pending before the Bengal Legislative Council, were fully explained to the Government of India in my letter No. 3060, dated 11th December last. A copy of the Bill in the form in which it was introduced, and of the Statement of Objects and Reasons, is now enclosed for readier reference. Since that time the measure has been much discussed, not only by the officers of Government and others to whom it was specially referred, and by the Select Committee of Council appointed to report upon it, but also in the public press, Vernacular and English, and a great mass of valuable suggestions has been brought together which it has not yet been found possible to arrange and digest.

2. I am now directed to forward, for the consideration of the Government of India, a copy of the Bill as preliminarily amended by the Select Committee, together with their Report on the same, and to invite attention to the remarks made in paragraph 14 of that Report. It will be seen that the Committee urge very strongly the propriety of taking up the revision of the Rent Law of Bengal in a much more comprehensive manner than was contemplated at first by this Government. The Lieutenant-Governor, it will be remembered, in view of the loud and constant complaints put forward by the zemindars as to the difficulty under the present law of collecting even undisputed rents, was anxious to provide them at an early date with a reasonably summary procedure to enable them to overcome the passive resistence of their ryots, provided that the ryots' tenure was at the same time so protected and strengthened as to obviate any fear of their being made to suffer unduly in the process. It is found, however, almost impossible to frame a procedure which shall be perfectly fair to both parties, and yet afford such special facilities to the zemindar as he seeks to secure. The procedure provided in the amended Bill is now declared by the zemindars to be so carefully guarded as to the practically of little use to them, and they have by their recognized organs expressed themselves ready to postpone their demand for a special procedure if only the whole subject of the rent law can be brought under adequate and detailed revision. It may indeed be found that if the substantive law of landlord and tenant can be put upon a more clear and intelligible basis, if the difficulties that have attended the working of the law of 1859 are duly considered and removed, and if the *ordinary* Rent Procedure is made more simple and expeditious, the necessity for having any special or summary procedure will not continue to be felt.

3. The Lieutenant-Governor finds that the suggestions of the Select Committee in this respect have the entire support of the Board of Revenue and of all the more experienced revenue officers in Bengal, as well as of the Native community. It is felt certainly that the task is one of considerable magnitude and difficulty, in which it is impossible confidently to anticipate success, but the general opinion is that the attempt should once for all be made.

4. The Lieutenant-Governor believes that the best mode of dealing with the subject will be to appoint a small official commission of experienced revenue and judicial officers, who should, in the first place, prepare a careful analysis and digest of the existing Rent Law as set forth in the Acts relating to that subject, and in the decisions of the courts since the passing of Act X of 1859. All the conflicting decisions of the courts, and all the omissions in the Acts themselves, would thus be brought clearly into view. The Commission would then consider the suggestions for amendment that have been put forward of late years, and endeavour to prepare a draft Bill embodying such additions to the substantive law, and such improvements in the law of procedure, as may commend themselves to their judgment. The Bill with the Report of the Commission would be published and circulated, and subjected to close scrutiny. The opinions of High Court Judges and of the divisional and district officers, judicial and executive, would be sought for and collated. The public would have every opportunity given it of being heard upon the subject; and eventually a measure based upon the results of this free discussion and deliberation might be introduced into the local Council with the sanction of the Government of India.

5. In considering the composition of the proposed Commission, the Lieutenant-Governor has felt it incumbent upon him at the present time to avoid as much as possible the creation

of special appointments, but it will be necessary that one member of the Commission should have his hands free of other duties to enable him to find time to prepare, under the instructions of his colleagues, the Digest and draft Bill. For this duty the Lieutenant-Governor would select Mr. C. D. Field, LL.D., Judge of Burdwan, than whom no one could be better fitted for the task. Mr. Field would be placed on special duty, receiving his present pay and allowances, and a junior officer would be appointed temporarily to act for him. The acting allowances of this officer would be the only extra charge to Government, and this can easily be met from the ordinary provision for administration in the provincial estimates. The members of the Commission would then be—

(1) Hon'ble H. L. Dampier, Member of the Board of Revenue.
(2) „ J. O'Kinealy, Legal Remembrancer.
(3) Mr. C. D. Field, LL.D., Judge of Burdwan, on special duty.
(4) „ H. L. Harrison, Secretary to the Board of Revenue.
(5) Baboo Brojendro Kumar Seal, Subordinate Judge of the 24-Pergunnahs.*

6. I am to solicit the early approval of the Governor General in Council to these arrangements. It is most desirable that the Commission should begin work at once.

No. 973—393 LR, dated Calcutta, the 18th April 1879.

From—A. MACKENZIE, ESQ., Secretary to the Government of Bengal, General Department.

To—The HON'BLE H. L. DAMPIER, Member of the Board of Revenue.

I AM directed to forward for your information a copy of a letter No. 832—337 LR, dated the 3rd instant, to the address of the Government of India in the Revenue, Agriculture and Commerce Department, proposing the appointment of a Commission to consider the question of amending the general Rent Law of these Provinces, and (if possible) frame a Bill which might form the basis of future legislation on that subject.

2. The Lieutenant-Governor has been informed by telegram that His Excellency the Governor General in Council has approved of the appointment of the Commission, and of Mr. Field's deputation on special duty, in the manner suggested in my letter, for a period of four months. Arrangements will be made to relieve Mr. Field as soon as possible, and on his arrival in Calcutta, I am to request you will, as President of the Commission (to which office the Lieutenant-Governor is pleased to appoint you) call the members together and arrange with the least possible delay the plan of working most likely to secure the objects in view. The Assistant Secretary to this Government in the Legislative Department will be *ex-officio* Secretary to the Commission.

3. All papers recorded either in the Legislative or Revenue Departments of this Government bearing upon the question of the amendment of the Rent Law will be made available to the Commission on its calling for them. The report and proceedings of the Behar Rent Committee, which have recently been received by Government, will be specially referred to it. The Hon'ble Judges of the High Court will also be asked to give any assistance that they can to the Commission in the way of furnishing it with any minutes or reports of the Judges or of subordinate judicial officers which might, in the opinion of the Court, be unobjectionably given, and assist its deliberations.

4. I am to request that the Commission will keep a formal record of its proceedings and inform Government in the Revenue Department from time to time of the progress made, and of the general character of any proposed modifications of the law that may commend themselves to its members.

MINUTES OF THE PROCEEDINGS OF THE COMMISSION APPOINTED TO CONSIDER THE AMENDMENT OF THE RENT LAW OF BENGAL.

THREE preliminary meetings of the Rent Commission were held at the office of the Assistant Secretary to the Bengal Government, Legislative Department, on the 26th of April, the 17th and the 24th of May 1879.

At these meetings Mr. Field laid before the Commission the lines upon which he proposed to prepare a Digest of the existing Rent Law. His plan was to incorporate the whole of the statute law and case-law; and to take Stephen's *Digest of the Criminal Law of England* as his model. This plan was agreed to: and Mr. Field then prepared a list of the Regulations and Acts and parts thereof concerned with the subject of landlord and tenant. This list was considered, and it was resolved that the Settlement Law should not be incorporated with the Digest, and that the Digest should deal with agricultural rent only, including in that term the rent of *bastu* land.

A letter was addressed to the High Court asking the Judges to direct all Moonsifs to make out a list of all sales of land for Rs. 1,000 or less in execution of decrees and of the purchasers at such sales for the year 1878-79.

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* Mr. A. Mackenzie and Baboos Peary Mohun Mukerjee and Mohini Mohun Roy were subsequently added to the Commission; the first on the 2nd December 1879, and the two latter on the 15th idem.

A letter was also addressed to the Inspector-General of Registration asking for returns of sales of land registered during 1878-79, the value of which was not more than Rs. 1,000.

The Commission then adjourned pending the completion of Mr. Field's Digest.

The Digest was completed and submitted to Government with letter No. 14, dated 19th August 1879.

It was widely circulated, and opinions were invited from a large number of persons, official and non-official. During this interval some members of the Commission were absent on leave. On their return, and on receipt of the opinions invited, the Commission resumed their sittings on the 9th December 1879.

Fourth Meeting of the Rent Commission.

Tuesday, the 9th December 1879.

PRESENT:

THE President; Messrs. Field, O'Kinealy, Harrison and Mackenzie, and Baboo Brojendro Kumar Seal.

The returns of the District Judges showing the sales of tenures and occupancy rights in each district were laid before the Commission, together with an abstract of them prepared by Mr. Field.

2. The opinions elicited by the letter of the Bengal Government calling for opinions on the Digest were also laid before the Commission with a *précis* of their contents prepared by Mr. Field.

3. The first question which arose in connection with this correspondence was whether the new Bill should, in respect of form and arrangement, follow the lines of Act VIII (B. C.) of 1869, and Act X of 1859, or whether the plan of the Digest was preferable.

The advantage of adhering to the old form was pointed out; but it was remarked that in view of the thorough revision of the law contemplated it was better to adopt as far as possible a more scientific form, placing the substantive law before the law regarding procedure, and as the Digest has been prepared on this principle, it would be better to adopt it in the draft Bill.

4. The second question discussed was, how far the wording of the old law should be adhered to. Mr. Mackenzie urged the importance of retaining words and clauses the meaning of which had in many cases been authoritatively determined after much litigation. Mr. O'Kinealy fully concurred in this, citing an instance of the inconvenience and expense entailed by verbal alterations. Mr. Field, on the other hand, was of opinion that some change in the phraseology, especially of the substantive law, would be occasionally necessary, (1) for the sake of uniformity; (2) in order to incorporate in the draft Bill the changes agreed upon by the Commission; (3) in order to clear up doubtful points arising out of judicial decisions; but that these points should indicate the limits of alteration.

Eventually it was resolved that the onus would lie on Mr. Field of justifying each departure from the language of the Acts now in force. Mr. Field accepted this view.

5. The Digest was then taken up article by article, and the preliminary chapter containing definitions occupied the Commission for the remainder of the sitting.

6. It was agreed that the definitions could only be settled provisionally, as objections to many definitions might come to notice in discussing subsequent articles.

7. The definition in the Digest of 'estate' was agreed to with a verbal alteration.

8. The word 'holds' was considered too vague as applied to 'proprietor' and the definition was altered. A discussion arose as to whether the words declaring the Government a 'proprietor' in the case of estates belonging to Government should be retained. Mr. O'Kinealy pointed out that there was no doubt of the law on this point, and that the words were open to many objections. They were retained pending further consideration. (They were afterwards struck out, *see* p. 5.)

9. It was pointed out that the definition of tenure was defective as not including a rent-free holding. Mr. Field undertook to draft a new definition. It was understood that a tenure was not intended to include a fishery, but the point was reserved for future consideration.

10. The definition of 'tenure-holder' was agreed to, and it was resolved to omit 'taluk' and 'talukdar.' The definition of 'under-tenure' to be re-drafted in accordance with that of 'tenure.'

11. 'Ryot.' Some discussion arose in regard to the definition of this word, and it was found impossible to agree upon any definition until other important principles had been decided. No definition of the Digest was retained for the present.

12. 'Rent.' Attention was drawn to the definition in the North-Western Provinces Land Act which was so worded as to include service rendered.

It was considered best not to deal with 'service tenures,' and the definition was retained.

13. The definition of 'land' was objected to, especially as regards its effect on 'bastu' land. Eventually the wording of the definition was altered, as also that of the explanation, and the illustrations were omitted; but it was agreed that the matter could not properly be considered till the principles on which the Bill should deal with bastu lands had been agreed upon.

14. The definition of 'lease' as including parol contracts was objected to, and attention drawn to the inconsistency of limiting 'pottah' to a written lease, but allowing 'kabulyut' to be the counterpart to a verbal lease.

Eventually it was agreed to define 'lease' and 'pottah' as alternative terms.

15. The definitions of 'collectorate,' 'kabulyut,' and 'year' were agreed to, and those of 'person' and 'month' omitted as unnecessary.

16. Article 2 was then discussed, and it was agreed to leave out clause (*a*) defining the effect of the Digest on contracts as open to objection.

17. The meeting then adjourned to Thursday, the 11th, at 3½ P. M.

Fifth Meeting of the Rent Commission.

Thursday, the 11th December 1879.

PRESENT:

THE President; Messrs. Field, O'Kinealy, Harrison and Mackenzie, and Baboo Brojendro Kumar Seal.

Mr. Field laid before the Commission the preliminary chapter of the draft Bill as modified in accordance with the Resolutions of the previous meeting.

It was resolved to postpone its consideration to the following meeting, to allow the members an opportunity of examining it at their leisure.

2. Mr. Harrison drew attention to the inconveniences entailed by the method of taking up the Digest article by article. Important questions had constantly to be postponed, as it was uncertain how subsequent principles would be decided. The discussions were consequently infructuous. It would be better to decide the chief principles first.

The President was disposed to concur in this view.

3. Some considerations were raised in favour of the method of going through the Digest, but on Mr. Field observing that Sir H. Thring's advice was to settle principles first, and it was evident that a good many principles would come up for re-consideration and discussion, the proposal was adopted.

4. It was arranged that Mr. Field would alter the Digest so as to incorporate in it the amendments agreed upon, and omit such portions as were considered unnecessary, and that the Digest thus converted into a *quasi*-draft Bill would then be considered section by section.

5. The questions raised in the correspondence on the Digest were then considered as in the order in which they occurred in the *précis*.

6. *Question* (*a*), as to the arrangemnt of sections in the draft Bill. This was disposed of at the last meeting.

7. *Question* (*b*), as to what portions of the Digest should be embodied in the draft Bill. This was considered, and it was generally agreed—

(1) to omit all provisions relating to the Certificate Procedure, or any other exceptional procedure in favour of Government or the Court of Wards for the recovery of rent and other dues:

(2) to omit the law relating to ghatwali and other service tenures, specifically saving such laws when necessary:

(3) to retain in the draft Bill the provisions of the patni law (Regulation VIII, 1819).

Some discussion arose as to the retention of the articles embodying Act X of 1859. It was suggested that the draft Bill ought not to be encumbered with a duplicate procedure, and *per contrà* that Act X when in force should not be interfered with.

Mr. Mackenzie observed that, if practicable, such a precedure for rent suits ought to be laid down as would be applicable in all courts, both those in which Act X is in force and those in which Act VIII (B. C.) of 1869 is in force; and if this were done, any further special incorporation of Act X in the draft Bill would be unnecessary. The Commission had first to settle the procedure and then to see what limitations might have to be imposed on its several adoptions.

This view was agreed to.

It was also agreed that a uniform procedure should be adopted for the sale of all tenures and under-tenures in execution of decrees for arrears of rent, and that the provisions of the patni sale law should be followed with the necessary modifications.

8. Mr. Ravenshaw's suggestion to require landlords to keep a detailed rent-roll, and to furnish ryots with a copy of the entries affecting them, was then considered.

Mr. Field looked upon the proposal with favour. He would require a court-roll to be kept up, similar to the court-roll of copy-holders in England, to take the place of the existing accounts—jumma-wasil-baki papers, &c. These accounts containing all necessary details should be written up as the transactions occurred, and the ryot should be entitled to a copy of all entries affecting him on payment of four annas. This copy would serve all the purposes of a pottah and of receipts. As regards the enforcement of the rule, the penalty should be not to let the zemindars sue for rent if they do not comply.

Mr. O'Kinealy considered that this new proposal would have no more effect than the existing system. It was only giving another name to zemindari accounts.

Mr. Field thought it would be useful as a record of actual transactions, and referred to what now takes place in court in rent cases.

Mr. Mackenzie did not see any advantage in the proposal: it was absurd to attempt by legislation to introduce a correct system of book-keeping or to compel all rent-receivers, however petty, to adopt it. On whatever principle a zemindar's books were kept, a court would always have to consider the weight to be attached to them as evidence with reference to the circumstances of the case and the proof of their correctness.

The President stated the views which he believed to be held by Mr. Ravenshaw, viz., that every zemindar should be bound to lodge his complete accounts in the Collectorate within three months of the end of the year showing how each ryot stands, in default of which they are not to be allowed to sue. He (the President) thought the putwari in his semi-official character was absolutely useless. The zemindar's amlah were quite as trustworthy. If such accounts were to be lodged at all to be of any value, they must be lodged in the custody of the Collector.

Mr. Mackenzie referred to section 34 of his Bill for the more speedy realization of arrears of rent, which he considered went as far as advisable or necessary. To insist on zemindars filing accounts with the Collectors would be to revive a system that necessarily broke down from its own weight. In the Bill accepted by the Select Committee last session, the point of accounts was dealt with thus. The person chiefly interested in getting correct accounts was the ryot. Every ryot knew what a receipt was, and the Bill simply entitled him to demand from his landlord a receipt in a particular form which was calculated to give the ryot all the protection he needed.

Mr. O'Kinealy and Mr. Harrison concurred.

Baboo Brojendro Kumar Seal concurred, but thought that it might be prescribed to keep all such accounts as are kept in bound books.

The President remarked that the sense of the meeting seemed to be against the law insisting on zemindars keeping their accounts in any prescribed form, the proposal seemed impracticable.

After some further remarks it was agreed to require counterfoil receipts to be given as in section 34 of Mr. Mackenzie's Bill, and not to legislate further on the subject of keeping accounts.

9. Mr. Taylor's suggestion to protect tenants of homestead lands from ejectment under certain conditions was then considered. This re-opened the question of bastu lands, and the extent to which they should be provided for in the draft Bill.

Mr. Field thought the Act should apply to them, except in matters of enhancement and rights of occupancy, in respect of which separate provisions would be necessary.

Mr. Harrison drew attention to a proposal made in the correspondence to provide for all bastu lands, except such as are included in Calcutta or municipalities under Act V (B.C.) of 1876.

Mr. Field would deal with all land out of Calcutta, and quoted a decision of Garth, C.J., which had not been accepted by the natives as according to their views and usages. This decision made it desirable to deal with the matter.

Mr. O'Kinealy was in favour of exempting large towns, such as Patna and the suburbs of Calcutta.

Mr. Field would frame the Bill in such a way as to make it applicable to all land out of Calcutta, whether homestead or agricultural, and mentioned instances which occurred within his experience in Moorshedabad and Burdwan. Perhaps a landlord desiring to eject should give compensation if he stood by and allowed a house to be built.

It was then decided that Mr. Field should draft sections for inclusion in the Bill in accordance with his views for future consideration.

10. It was agreed that Mr. Harrison should, in communication with the President and Mr. Field, draw up and circulate a list of points to be considered at the next and at each subsequent meeting.

11. Article 3 of the Digest was then considered, requiring courts to refuse to exercise jurisdiction where the relationship of landlord and tenant was not established.

Mr. Mackenzie proposed to omit the article as unnecessary.

Mr. Field observed that the article provided for a point commonly occurring.

Mr. O'Kinealy was of opinion that the section did not represent the law.

12. Mr. Field demurred to this, but admitted that as drafted it might lead to error, and that the position of the section might be well altered. He thought that the special procedure should apply only to cases in which the relation of landlord and tenant exists. Finally, this question was allowed to stand over.

13. The meeting adjourned to Saturday, the 13th, after Council Meeting.

Sixth Meeting of the Rent Commission.

Saturday, the 13th December 1879.

PRESENT:

THE President; Messrs. Field, O'Kinealy, Harrison, and Mackenzie, and Baboo Brojendro Kumar Seal.

Mr. Field read from his notes the general principles that were agreed to at the last meeting.

2. The preliminary chapter as re-drafted by Mr. Field was then considered.

3. Mr. Field agreed to omit all reference to Government in the definition of 'proprietor.'

4. A few other verbal alterations were made, and Mr. Field's proposal to add a fifth section dividing the Bill into parts and chapters was agreed to.

5. The points proposed for discussion at this meeting were then considered.

6. *To make the doctrine of "merger" applicable to all tenures and under-tenures of the several degrees.*

Mr. O'Kinealy was against the proposal. He pointed out that there was no such doctrine strictly speaking, and during the last hundred years the principle had met with no favour in English courts of law or equity, and, further, that the common law did not run in the mofussil. If the doctrine of merger were introduced, it would only drive the people to evade it as was done in England.

Baboo Brojendro Kumar Seal was also opposed to the proposal.

The President and Mr. Harrison pointed out the great abuses which now prevailed in many estates, especially in the Sunderbuns, where tenants created under-tenures in their own favour to the detriment of the landlord. In one settlement it had been gravely proposed to the Board to allow a settlement-holder some 50 per cent. collection expenses for collecting rent from himself in four or five different capacities.

Mr. Field considered the present state of the law a fruitful source of fraud, and cited a flagrant case within his own personal experience as Judge of Burdwan.

Baboo Brojendro Kumar Seal thought that any legislation on the subject would be easily evaded by creating or purchasing the under-tenures in favour of relatives.

Mr. O'Kinealy pointed out that the merger of an under-tenure of the first degree in a tenure would cause all the under-tenures of lower degrees to lapse as having nothing to rest upon.

Mr. Field replied that this consequence could easily be guarded against in drafting.

Eventually it was decided to draft the Bill in such a manner as to make it clear that the under-tenure should merge in the tenure or superior under-tenure, except when the holder made it evident by definite acts that it was his intention to keep the subordinate tenure alive. Further consideration of the subject was postponed till the draft section should come before the Commission.

7. *Resignation of permanent tenures.*—Mr. Harrison proposed to allow the holder of a permanent tenure or under-tenure to resign it. Some objection was raised to this, and he urged that on grounds of expediency it was very undesirable to compel a patnidar to continue paying for a patni which his zemindar would not sell and would not allow him to resign.

Mr. Mackenzie and Mr. O'Kinealy considered that the difficulty would be sufficiently met by requiring the superior landlord to sell the tenure before having recourse to any other remedy.

The President and Mr. Harrison accepted this, provided the section was so worded as to make it quite clear that the zemindar must not merely put the tenure or under-tenure up to sale, but either find a purchaser or purchase himself, before resorting to any other remedy.

8. *Escheats.*—The question of a tenure or under-tenure escheating to Government or the superior landlord was then referred to. It was considered undesirable as well as *ultra vires* to alter the present law, which is quite clear in favour of the escheat to Government.

9. *Limitation.*—The proposal to assimilate the principles of limitation, as regards rent suits to those of the general limitation law, as proposed in foot-note 6 to Article 78 of the Digest.

Mr. Mackenzie drew attention to section 6 of Act XV of 1877, which only saves the special limitation in rent suits in respect of the period for institution, and not as regards disability and other incidents.

Mr. O'Kinealy said the law had been so settled since 1877, and Baboo Brojendro Kumar Seal pointed out that the question had been definitely decided in a case in the Calcutta Law Reports, Vol. IV., p. 371. This made it clear that the ordinary provisions of the Indian Limitation Act already applied to all rent suits.

Mr. Field admitted this, pointing out, however, that this decision had been published since the Digest had been written.

The President observed that this decision involved one result which he could not accept, viz., that a minor on coming of age might sue for rent for the whole period of his minority, and that even at an enhanced rate, if his father had served a notice of enhancement shortly before his death, the exclusion of the time of lunacy would have the same effect. From the nature of the case, ryots' rents were payable by a poor man year by year out of the produce of the year. With reference to this characteristics of this particular kind of due or debt, he did not think that the law ought to allow it to accumulate under any circumstances. If the manager of the minors' or disqualified proprietors' estates neglected their duty in realizing rents as they fell due, as soon as the estate passed into the hands of a qualified proprietor, he would have his remedy against the managers for mismanagement.

In connection with this decision, the question as to the powers of the Commission to propose alterations in Acts of the Government of India passed subsequent to the Indian Councils Act was brought under discussion; was the Commission to make such recommendations as seemed best to it for the amelioration of the Rent Law, or only such recommendations as it would be within the powers of the Bengal Council to give effect to.

The President stated that on this point it was the wish of the Lieutenant-Governor that they should so frame the draft Bill as to admit of its being passed by the Bengal Council. This, however, did not debar the Commission from making special recommendations on important questions involving the amendment of an Act of the Government of India, and this was precisely one of the questions in which this would be necessary. It would be intolerable to allow a minor on coming of age to re-open all questions connected with the payment of rent during his minority, extending perhaps over 21 years.

Baboo Brojendro Kumar Seal suggested that a distinction should be drawn between the case of minors who had or who had not a legal guardian.

It was then agreed that Mr. Field should draft a section providing for limitation in the matter of ordinary rent suits running against minors, lunatics and idiots, and that in reporting to Government attention should be drawn to the fact that this would entail an alteration in the Indian Limitation Act.

10. *Distraint.*—On the proposal to abolish the law of distraint altogether, the President doubted whether this was feasible.

Baboo Brojendro Kumar Seal would retain the law but improve it.

Mr. Mackenzie, Mr. Field, Mr. O'Kinealy and Mr. Harrison were, however, in favour of abandoning distraint altogether. What zemindars valued was not distraint as authorised by law, but an altogether illegal form of distraint. If they got a reasonably rapid procedure for recovering rent, they would not need distraint. The resolution of the majority to abandon the law of distraint altogether as proposed by the Behar Indigo Planters' Association was adopted, and it was subsequently noticed that the Behar Rent Committee had made a similar recommendation by a majority of ten to four.

11. *Fractional shares and claims.*—It was agreed to give legislative effect to the ruling that no tenant is bound to pay the rent of the same holding to two or more landlords claiming fractional shares, unless by special contract or usage he has abandoned his right.

Also to facilitate the appointment of a manager of joint undivided estates by the civil court in cases of dispute, especially meeting the case of such appointment being desired by the tenants.

12. *Deposits of rent.*—Mr. Mackenzie expressed a doubt on administrative grounds, whether any extension of the privilege of the deposit of rents ought to be sanctioned.

It was pointed out, however, that this difficulty would be met by modifying the scale of fees so as to enable an efficient rent deposit department to be organized, whenever the privilege was largely resorted to.

Eventually it was agreed to extend the privilege of depositing to the cases of coparceners refusing joint receipts and of disputed claims to the title to collect rent, and also to transfer the work of receiving deposits to the Collectors as proposed in Mr. Mackenzie's Bill.

13. *Instalments of rent.*—On this point it was agreed to accept the principles contained in section 33 of Mr. Mackenzie's draft Bill, as regards the fixing kists days for the payment of rent and disallowing interest on instalments falling due intermediately.

14. *Suits for pottahs and kabulyuts.*—It was agreed to abolish suits for pottahs and kabulyuts and to substitute a simple form of suit for the determination of the conditions of the tenancy.

15. *Registration of transfers.*—It was also resolved to make the law uniform regarding the obligation to register all transfers of tenures, under-tenures, and occupancy rights so far as made transferable in the landlord's sherishta. It was, however, noticed that the Behar Indigo Planters' Association had raised an objection to this as interfering with any proposal for cheapening the registration of such tenures in public registry offices.

The next meeting was adjourned to Wednesday, the 17th instant, at 11.

Seventh Meeting of the Rent Commission.

The 17th December 1879.

PRESENT:

THE President; Messrs. Field, O'Kinealy, Harrison and Mackenzie, and Baboos Brojendro Kumar Seal and Peary Mohun Mookerjee.

The first question that came under consideration was that of bastu lands outside the city of Calcutta. Mr. Field laid before the meeting an outline of the principles on which he proposed to draft.

Mr. O'Kinealy contended that, before a question of this kind was discussed, the case-law on the subject ought to be laid before the Commission. It was most desirable to see how the law at present stood as hitherto interpreted by the courts. He cited a few of the cases on the subject—1 Agra, F. B., 115; 3 N.-W. R., 282; 16 W. R. 103; 2 W. R. (Act X), 40; Act XI of 1859.

The importance of examining the case-law on the subject was generally admitted; but as there was no reason to suppose that it would present the question in a new aspect, it was agreed to go on with the present discussion, Mr. Field undertaking to draw up a note on the subject analysing the cases when laying the draft sections before Commission.

2. The first proposal was that land used for let for purposes of agriculture, horticulture, pasture, and the like, may not, without the consent of the landlord, be used for building purposes.

The President asked what "building purposes" would include. A ryot's house should not come under this, it being an appurtenance to the jote.

Mr. Field certainly would not preclude the ryot from building a house for the purpose of carrying on the cultivation of his land, but he ought not to be permitted to lease it out as a building site to other ryots or to the general public.

Mr. O'Kinealy said that the practical question was—What is the remedy of the landlord if a ryot changes the nature of his holding? For his own part he would allow the ryot to convert his holding into building ground, and in fact do anything that did not destroy the value of his holding and so injure the reversion, *e.g.*, he might dig a tank.

Mr. Harrison asked whether this principle should be extended to a variety of purposes over which large zemindars were usually supposed to exercise control, *e. g.*, to setting up a hât or building a serai.

Baboo Brojendro Kumar Seal considered that it would do no harm to the landlord as he might then enhance the rent. He referred to the difficulties in which the ryots were placed in the well-known cases of *Pete Das* and *Prasunno Kumari*.

Mr. Mackenzie contended that the only sound and true principle was that the tenant should not do anything to endanger his landlord's security for the rent. However the land was treated, the landlord should not be in a worse position than before. He would allow an occupancy ryot (as he understood that the Commission was now considering the case of ryots with a right of occupancy) to do anything he liked with his holding as long as he did not diminish its rent-paying value to the landlord.

Mr. O'Kinealy concurred in this view.

Baboo Peary Mohun Mookerjee dissented altogether. He considered that it would encroach materially on the customary rights of zemindars. The present tendency of the courts is in every way to protect a ryot who has once been allowed to build, and therefore his right to do so required to be jealously watched. If the rate of bastu land in an estate were Rs. 10 a beegah, a zemindar would be materially injured if a ryot who had acquired a holding for the purpose of cultivation, and therefore at perhaps Rs. 2 a beegah, might, after obtaining a right of occupancy, convert it into bastu land and lease it to other ryots at Rs. 5 a beegah.

Mr. Field would not allow a ryot who held land used, or intended to be used, for agricultural purposes to apply it to other uses, and thereby pocket benefits that might accrue from causes to which he contributed nothing, as, for instance, from the making of a railway. The zemindar has always regarded these extra advantages as part of his profits, and the ryot has not been allowed to appropriate them. He put the case of building land in the neighbourhood of Calcutta and other places which has risen enormously in value.

Mr. Mackenzie repeated that the true issue was—May not an occupancy ryot (questions of enhancement apart), so long as the security for the rent is safe, do what he likes with the land, or is such a ryot only to be permitted to sow crops? The zemindar has, no doubt, a certain property in the soil, but not an exclusive property as in England, and it was not equitable that he should be allowed to debar the ryots from converting their land to more profitable purposes. He should be allowed to do nothing to injure the landlord's security; but whether any particular form of user did this or not was a question of fact. He should not be specially barred from building or from anything else.

Mr. Harrison thought Mr. Mackenzie had put the question very fairly, but he could not at all concur with him.[*]

He quite agreed with those who thought that the acquisition of occupancy rights by genuine cultivators should be in every way encouraged; but it was an indispensible corollary to this that rights thus acquired should not be converted to other purposes, opposed to what the zemindar considered to be his interest.[*]

Mr. Field then framed the following proposition:—

"That the occupancy ryot be not allowed without his landlord's permission to use land for building purposes or other purposes different from those of agriculture and the like."

Ayes.	*Noes.*
Baboo Peary Mohun Mookerjee.	Mr. O'Kinealy.
Mr. Harrison.	Baboo Brojendro Kumar Seal.
„ Field.	Mr. Mackenzie.
The President.	

Mr. O'Kinealy desired that his counter-proposition should be recorded, viz. :—

"That an occupancy ryot be allowed to use his land as he thinks fit, provided that he does not diminish the value of his holding as security for his landlord's rent."

3. The next proposition was that a tenant might be ejected if, after receiving notice of his landlord's objection, he persisted in using the land for building purposes, &c.

Mr. O'Kinealy thought it would suffice if the tenant were liable to be sued for damages.

Mr. Field pointed out the difficulty of obtaining damages from a ryot, and after a brief discussion all the members, except Mr. O'Kinealy, agreed to ejectment as the remedy, if a ryot in the face of his landlord's objection persisted in so using the land.

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[*] Mr. Harrison subsequently expressed an opinion that the view now taken by Mr. Mackenzie did not appear to be consistent with the provisions of the Bill as presented by the Select Committee to the Legislative Council. The principle of that Bill was that an occupancy right was intended for the benefit and security of actual cultivators, and on that ground it was expedient to facilitate its acquisition in every way, and even not to allow the cultivator to contract himself out of his right. But the case was altogether altered if a cultivator, after acquiring his right as such, might then use it to the annoyance of the zemindar in a variety of other ways, *e. g.*, if the zemindar had a thriving hât, the ryot might, at the instigation and backed by an opposing zemindar, set up a rival hât on his occupancy holding.

4. The next proposition was that a landlord be allowed twelve years to prefer an objection.

Mr. O'Kinealy would substitute one year.

Mr. Mackenzie suggested two years as sufficient (with reference to seasons, &c.) to give the landlord a complete opportunity of seeing whether the ryot was altering the character of his tenure.

With the exception of Baboo Peary Mohun Mookerjee, all agreed that the landlord should not have more than two years' time to object. The Baboo would prefer twelve years.

It was also agreed that the time should run "from the conversion or changed use;" Baboo Brojendro Kumar Seal suggesting "from the commencement of operations towards the coversion, &c."

5. The fourth proposition, to allow a landlord objecting as above within two years to eject *without* compensation if his objection was made within a reasonable time, was agreed to.

6. As regards the fifth proposition, requiring a landlord to give compensation if he failed to object within a reasonable time, or knowingly stood by and allowed the ryot to expend money on the conversion of the holding, Mr. O'Kinealy urged that if a zemindar stood by and allowed a tenant to build he ought not to be entitled to object.

Mr. Mackenzie agreed that if a landlord knowing his tenant to be building did not object, he should be presumed to have given permission and should not be allowed to eject.

Mr. Harrison did not object to the principle, but apprehended that it would not work well in practice. Whenever a zemindar objected within the two years, the plea would always be advanced that he had 'knowingly stood by.' So vague a question mainly depending on inferences would admit of any amount of evidence of a conflicting and unsatisfatory character, the decision of which would often depend on the sympathies of the presiding officer.

The President also thought that, as it would always be in the power of the ryot to place such knowledge beyond doubt by serving a notice on his landlord, or even by sending him a registered letter, the knowledge of the zemindar ought not to be infererd unless the ryot could produce some tangible evidence of this kind.

Mr. Field, however, agreed with Mr. O'Kinealy and Mr. Mackenzie, and on going to the vote as to whether the "landlord should lose his remedy if he were found to have 'knowingly stood by,' even though he objected within the two years," there were—

For.	*Against.*
Mr. Mackenzie.	The President.
„ Field.	Mr. Harrison.
„ O'Kinealy,	Baboo Peary Mohun Mookerjee.
Baboo B. K. Seal.	

Mr. O'Kinealy's proposal was therefore agreed to.

It was also understood that all the above proposals referred to occupancy ryots only. In the case of holders of tenures or under-tenures the rights of the tenants would depend on the conditions of their tenancy.

7. The next question was whether 12 years' occupancy of land, used or let for building purposes—(*a*) without a lease, (*b*) with a lease having no terms, (*c*) after expiry of the term—should confer a right of occupancy, the land, together with the buildings thereon, being subject to sale for arrears of rent.

Baboo Peary Mohun Mookerjee opposed this. The courts had always held against it, and he would not alter the law. He pointed out that the property would all pass to tenants, and no landlord in that case would care to make improvements. He thought the rent of building land should not follow the rule of agricultural holdings.

Baboo Brojendro Kumar, admitting this view of the law, would change it and give a right of occupancy in land devoted to building purposes, when the contract did not interdict the acquisition of such a right.

The President asked what distinction there was as regards this policy between agricultural and building lands. If the land was orginally leased for building purposes, it was as desirable to protect the tenant as if he was a cultivator.

Mr. Mackenzie was of opinion that the law should lay down the general principles by which building, as well as agricultural holdings, should be regulated, but he would draw a distinction as regards the liberty of contract in the two cases and allow it to come into play much more freely as regards building land. He would permit a landord to prescribe any terms he pleased in leasing building land, and would permit him to bar by contract the acquisition of a right of occupancy in such lands. In default of such contract, however, he thought the right of occupancy ought to accrue even in building land.

The sixth proposition was then put to the vote and carried, the President and Baboo Peary Mohun Mookerjee voting against it.

It was also agreed that the 12 years might be made up by holding the land part of the time for purposes of agriculture and part for purposes of building.

8. The seventh proposition was to allow enhencement up to neighbouring rates when the right of occupancy had been acquired. If no evidence of neighbouring rates be available, then the landlord might enhance to such a point as to give ten per cent. upon the market value of the land.

An objection was raised to the difficulty of ascertaining market value; but as this difficulty already existed in the Land Acquisition Act, and had been practically surmounted, the words were allowed to stand.

Mr. Mackenzie then objected that ten cent. on the market value was too high. Land was a very favourite investment, and six or even five per cent. would suffice.

Mr. O'Kinealy concurred, but he would reduce it to four per cent., which was higher than the rate of interest on Government securities.

Mr. Harrison agreed with Mr. O'Kinealy. The full proprietary right in land would always fetch twenty, often more than twenty years' purchase. In the case in point, the tenant having an occupancy right, the landlord was assumed not to possess the full proprietary right represented by the market value; four per cent. on the market value would, therefore, be ample.

Baboo Peary Mohun Mookerjee would retain ten per cent.

The majority of the Commission was in favour of fixing five per cent. for the present. The amount could be reduced hereafter if it was found on enquiry that the prevailing ratio of building ground-rent to market value was less than 5 to 100.

The President would leave out altogether the reference to "neighbouring rates." Mr. Field, however, would retain the words, but agreed to make it optional with the landlord to proceed with reference to neighbouring rates or market value.

9. It was then agreed that such of the above provisions as modified the law be not retro-active, and that such as re-affirmed the existing law be retro-active.

10. The next subject for discussion was whether the draft Bill should contain provisions for the apportionment of the rent of tenants, on the division by transfer or otherwise of the superior tenure or under-tenure.

A distinction was drawn between the case of a specific and a fractional division of the superior tenure.

Mr. O'Kinealy opposed making such division obligatory on the tenant in any case. It was not fair to him to require him to pay rent to different landlords when he had acquired an integral holding, and the principle was not in accordance with the present law of partition. The sense of the Commission was, however, in favour of requiring apportionment in certain cases, and it was agreed that Mr. Field should draft definite sections for consideration.

11. It was next considered whether it was advisable to frame a more precise rule for the relinquishment of a tentancy by abandondent.

Mr. O'Kinealy was against making any change in the law on this head. He would make it a matter of evidence; if the abandonment was proved, the contract could be rescinded by the landlord. This was the present law. There was always an agreement in such a case between landlord and tenant.

Baboo Peary Mohun Mookerjee thought some more precise rule was needed. He put the case of a ryot and his family going away, and the zemindar letting the land to another ryot. What was the law if the ryot afterwards turned up and sued for the land, denying that he had abandoned it?

Mr. Field pointed out that the zemindar might, in case of abandonment before the sowing season, lose the rent of a part of the year.

It was finally agreed that in the case of saleable holdings the landlord should proceed to a sale, the difficulty of not finding an absconded ryot being got over by a notice on the land; and that in the case of non-saleable holdings, the landlord should have the discretionary power of accepting a verbal relinquishment, and of treating a year's abandonment as a rescission of the contract of tenancy.

12. The next subject discussed was whether a tenant should forfeit his tenancy by denying his landlord's title. Mr. Field contended for the equity of this doctrine, but would limit it to cases where the disclaimer appeared upon the record.

Mr. O'Kinealy was of opinion that the section in the Digest stated the law too widely. A tenant might deny the title of the landlord's transferee, even though he had paid rent to him, if he had paid such rent by mistake, and in fact the title of any one except that of the landlord who had put him in possession of his holding. This view was accepted.

13. The elucidation of the law as to suits against agents for the recovery of money on accounts was next considered.

Mr. Mackenzie was inclined to omit all reference to this subject. The present law worked well. Mr. Field and the President dissented altogether. It was very necessary to make such suits a reality instead of, as at present too often, a farce.

It was agreed that Mr. Field should draft on this basis.

14. The Commission then adjourned to Tuesday, December 23rd, at 11 A. M.

Eighth Meeting of the Rent Commission.

Tuesday, the 23rd December 1879.

PRESENT:

THE President; Messrs. Field, Harrison, O'Kinealy, and Mackenzie, and Baboos Brojendro Kumar Seal and Peary Mohun Mookerjee.

The desirability of protecting under-tenures on the sale for arrears of rent of the superior tenure or under-tenure was first considered.

The President remarked that the first question for decision was one of principle. Was it expedient to endeavour to protect under-tenures when the holder of the superior tenure defaulted? It involved a radical change in the law, the present policy of which was to be found in the patni sale law.

Mr. Field saw no reason for altering the present law: it had already been agreed upon provisionally to adopt the patni sale procedure for all sales of tenures and under-tenures.

Baboo Brojendro Kumar Seal would allow the purchaser to avoid such incumbrances as mortgages; but the patni law went further than this, and he would modify it to some extent.

Mr. O'Kinealy denounced the present system as one for legalizing fraud. By it a man could create incumbrances and realize their value. He could then default and receive their value over again by giving the purchaser an unencumbered title, leaving the injured party to the risk of a suit. He would not admit that the policy of the present law was to refuse protection to under-tenures. Even under the patni law an under-tenant might pay the rent and save his under-tenure, and for some years past the tendency of all legislation had been to widen the circle of protection. He thought the principles of the revenue law should be followed, and that under-tenures should not be invalidated more than was necessary.

Mr. Field thought that cases of under-tenures being intentionally and unfraudulently invalidated were very rare. When a sale was made with the express object of avoiding under-tenures, the Privy Council had ruled it illegal.

Mr. Mackenzie would give protection to under-tenants, but would allow the purchaser of the superior tenure to enhance if the rent were shewn to be insufficient. He would also protect tenures, the deeds of which had been registered before sale.

The general sense of the Commission (Mr. Field and Baboo Peary Mohun Mookerjee dissenting) was in favour of protecting under-tenures so far as this could be done without endangering the reserved rent of the landlord, and also without exposing the purchaser to the risk of having a variety of private and unknown encumbrances brought forward as soon as the sale was completed.

The President suggested that protection must be restricted to registered under-tenures, and asked whether any system of registration in the sherishta of the superior tenure-holder would be a sufficient security against fraud.

Mr. O'Kinealy would require registration of under-tenures in the Collector's Office. The purchaser would only give the full value if he had the means of knowing the incumbrances on the property. The seller would get what was fair, namely, the value of his property incumbered as it might be, and should not be allowed to repudiate his own acts. The only person really deserving of consideration was the landlord.

Mr. Harrison remarked that all under-tenures of above Rs. 100 must be already registered, and registration of all deeds affecting immovable property might not improbably be ere long made compulsory.

Mr. Mackenzie pointed out that this would only meet the case of future creations. Under-tenures already in existence, created by unregistered deeds, could not be registered now under any circumstances, and some means must be devised to enable such of them as were *bonâ fide* to be protected.

It was then agreed that all registered under-tenures should be protected at a sale for arrears of rent, provided the purchase-money covered the arrear; and that Mr. Field should draft sections to give effect to this principle, and devise the most practical means of giving existing under-tenure-holders an opportunity of protecting themselves.

2. The suggestions were then discussed—(1) whether, in the event of the sale not realizing the arrear, the tenure or under-tenure should be then and there again put up to sale, or the sale be postponed; (2) whether the under-tenants should have any privilege of pre-emption at the amount of the arrear without the right of avoiding under-tenures. It was considered unnecessary to allow the under-tenant any more privileges. He could, if he wished it, be present at the first sale and run up the price to the equivalent of the arrear, and if he omitted to do so, he could still attend at the second sale and secure the tenure fetching such a price as would enable him to recover the value of his rights that would be avoided.

As regards (1), Baboo Brojendro Kumar Seal was opposed to a postponed second sale. There ought to be one sale only, as under the present law. To allow a re-sale under certain circumstances with different rights to the purchasers would bring in confusion. Purchasers would not know whether they were buying the property subject or not subject to incumbrances.

The President dissented altogether from this view. Holding the sales on the same day would create confusion, and postponing the sale would prevent any doubt.

It was then agreed upon to have a postponed sale if the first sale did not realize the arrears with costs, and also to make the sale postponable at the request of the landlord only. If the landlord was content to purchase the tenure with its incumbrances for less than the arrear, he might do so. The question was raised whether in that case he could recover the balance of the arrear from the tenure-holder. The tenure-holder might plead that had the sale been postponed his liability would have been cleared off, and therefore, if the landlord elected not to apply for postponement, should have no further remedy.

Mr. O'Kinealy and Mr. Harrison, however, argued that the defaulter could have no equitable ground to complain. The small price would be entirely due to his own action in encumbering his holding. The view was accepted.

3. The proposals of the Behar Commission with regard to putwaris were then brought forward, but it was considered expedient to reserve all the special Behar proposals for subsequent discussion. It was resolved that no provisions of the Bill, so far it relates to Bengal, should depend on the retention of putwaris.

4. The proposal of Mr. Browne, Judge of Patna, to require courts decreeing rights of occupancy to order the exchange of pottahs and kabulyuts specifying boundaries was next considered.

Mr. O'Kinealy thought this was already provided for by the existing law; the boundaries or a sufficient description of the land must appear in the plaint.

The President, however, thought it would be a great advantage to require their specification in the decree itself so as to make it complete; otherwise the plaint and all the subsequent proceedings might have to be examined to enable a person to know precisely the extent of the decree.

This was agreed to. It was also resolved at Mr. Mackenzie's instance to omit all reference to an interchange of pottahs and kabulyuts as quite superfluous. The decree would suffice.

5. As regards illegal cesses, it was not considered necessary to take further action against them, and therefore the proposal to prescribe a special procedure in the Collector's Court to make the law against illegal cesses more operative was negatived.

6. Resolved that the law contained in Article 59 of the Digest was sufficient for insuring the ryot peaceable possession; and Mr. Finucane's proposal, that the landlord should guarantee him possession against all comers, as a condition of claiming rent from him, was not accepted.

7. The question of the ejectment of non-occupancy ryots was next discussed, and it was generally agreed to remove all doubt as to the obligation of ejecting non-occupancy ryots only through the courts.

8. It was then proposed to prescribe that notice of ejectment should be served on the ryot through the court, and not less than three months before the close of the year at the end of which he is to be ejected.

Mr. Mackenzie thought the notice should be served by the zemindar as in the patni law, and not through the court.

Mr. Field was also of opinion that the landlord would do this much better than the court.

Mr. Harrison and Baboo Peary Mohun Mookerjee strongly advocated service through the court; otherwise the ryot would always deny the notice, and a wider door would be opened to false evidence.

The members then voted as follows:—

Service through the court.	*Service through the zemindar.*
Baboo P. M. Mookerjee.	Mr. O'Kinealy.
Mr. Harrison.	Mr. Mackenzie.
Baboo B. K. Seal.	Mr. Field.
The President.	

9. Resolved, after some discussion, that the notice should be served on the ryot three months before the close of the year, at the end of which he was to be ejected, and that he might come in at any time during that period to prefer an objection.

10. Resolved also, that if he failed to do so, the landlord should be allowed to apply to the court to give effect to the ejectment.

11. The question, however, remained for disposal whether, if the landlord served his notice in due course, and no objection was raised by the ryot, the latter should incur any penalty for not surrendering the land, and thereby compelling the landlord to have recourse to the court again.

Mr. Field suggested for consideration whether a ryot who held over after notice to quit should not be liable to pay double rent, as in England.

Messrs. Mackenzie and O'Kinealy would prefer reasonable compensation, and saw no reason why a different rule should prevail in the case of landlord and tenant to that in other cases.

This view was agreed to, as was a suggestion that if the landlord did not apply to the court within three months after the close of the year, he should be held to have waived the notice and condoned the continued occupation.

12. The question was then discussed whether the absence of any objection on the part of the ryot within the three months should disentitle him to contest a subsequent ejectment.

Mr. Field said that a ryot remaining in possession without right after the service on him of a notice to quit was a trespasser,—was in the position of any other person wrongfully holding immovable property,—and that the landlord should be left to the same remedy against him as was open to any other person wrongfully kept out of the possession of land. If it turned out that the ryot had no right which was not determined by the notice to quit, he would be liable for mesne profit and costs.

Mr. O'Kinealy would certainly give the ryot an opportunity of objecting. If at the end of the three months, or indeed after dispossession, the ryot appeared and showed that he had not received notice, he must be heard. The proposed limitation was not practicable. Moreover, before Act X of 1859, no ryot could be ejected at the bidding of the landlord, nor indeed by a summary suit, unless for arrears of rent, and even after decree a khoodkasht could escape by paying the amount due, and Act X of 1859 had not really changed the law, though the courts had put a wrong construction on some of its provisions. In support of his contention he referred to—

2. Harrington's Analysis, 185, 189.
S. D. A., 1839, p. 514.
Circular Orders, S. D. A., 76.
Colebrooke's Sup. Dig., Arts. 69, 70, pp. 253, 266.
Reg. VIII, 1819, secs. 18, 19, 20.

It was therefore absolutely necessary to give the ryot an opportunity of appearing before ejectment.

13. It was generally agreed that, if the ryot refused to surrender possession, the landlord must resort to the court, and the court must hear the ryot before deciding; but much difference of opinion was elicited upon the question whether a ryot not having a right of occupancy should be liable to ejectment upon a mere notice at the will of his landlord.

It was finally settled that, as the subject had not been proposed for discussion, but had risen in the course of the debate, it should be deferred for more mature consideration at the next meeting, the President expressing an opinion that those who were opposed to allowing the landlord to eject at his discretion a non-occupancy ryot, and who would therefore reverse the doctrine enunciated by the High Court for many years past, ought to propose clear and definite limitations to this right. He could not support any vague and purely negative views leaving the whole question in anarchy and confusion. The term "resident cultivator," to whom such privileges were to be conceded, should be very carefully defined.

14. Resolved, as to the right of the ryot to the way-going crop at the time of ejectment, to adopt the rule made for the North-Western Provinces by Act XVIII, 1873, section 42, and for Oudh by Act XIX, 1868, section 46.

The Commission then adjourned to Tuesday, the 30th of December.

Ninth Meeting of the Rent Commission.

Tuesday, the 30th December 1879.

PRESENT:

THE President; Messrs. Field, Harrison, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal and Peary Mohun Mookerjee.

The President observed that he understood the first question to be considered was—Should any privileged rights be extended to any class of ryots to which they were not now attached by existing law? He believed that at present a non-occupancy ryot was not protected against ejectment by his landlord; if a scheme could be devised by which the zemindar could practically secure the share of the increased value of produce which in theory was admitted to be his right rent, he would consent to extend the privileges of the ryots, but not otherwise.

Mr. Mackenzie held that under the old law all khoodkhasht or resident ryots were protected against arbitrary ejectment. Act X had substituted for the khoodkasht class a class of statutory occupancy ryots, and in so doing had done injustice to many khoodkasht tenants. He would leave all occupancy ryots in the enjoyment of any privileges awarded them by Act X of 1859, but would modify the law as regards non-occupancy ryots, by not allowing a landlord to eject them if they had shown an intention of permanently settling by cultivating land for three years or upwards, so long as they paid their rent; he would only allow a landlord arbitrarily to eject any ryot from lands which he has cultivated for less than three years.

The President and Mr. Harrison were of opinion that, put in this way, the proposal was deserving of careful consideration. It would probably be impracticable to confer privileges on the khoodkasht ryot as such without any reference to the duration of his occupancy; but the definite limit of three years made the proposal feasible. The question would still remain was—On what grounds the rent of such a ryot could be enhanced?

Mr. Mackenzie, Mr. Field and Mr. O'Kinealy had prepared papers on the meaning of the term khoodkasht ryot, and the circumstances under which he could be ejected; these were read to the meeting; Mr. Mackenzie and Mr. O'Kinealy contending that what constituted a khoodkasht was merely his admission to the village and his intention to settle; while Mr. Field was of opinion, though it may have been otherwise at the time of the permanent settlement and for some years afterwards, yet in later times some length of occupation and residence came to be regarded as essential to create the status of a khoodkasht ryot.

After some further discussion as to the precise meaning and status of khoodkasht ryots, the President observed that they were nearly all agreed that at the time of the permanent settlement the khoodkasht ryots meant ryots residing in the village; but the effect of subsequent legislation regarding their status seemed open to a great diversity of opinion. He proposed, therefore, to consider the question entirely on grounds of present expediency, and of what they might think best for the country in an altered state of things from what prevailed when many of the old Regulations referred to were enacted.

Mr. Mackenzie said that the definition of occupancy ryot in Act X was supposed by some persons to be exhaustive; but this was not intended. Existing rights, such as local customs with shorter periods of prescription, were not interfered with by Act X, and it was a mistake to suppose that the Act had made a clean sweep of these. He had looked round for a principle that might be followed in giving legislative recognition to these customary rights, and had come to the conclusion that prescription would after all be the most satisfactory test. Though prescription was not the only method of establishing rights, it was always recognized as a reliable mode of proof. There were many difficulties in defining a khoodkasht ryot, and he would take a reasonable term of prescription as evidence of intention of permanent cultivation. He accordingly proposed three years—a term which Mr. Scones in 1859 had declared to have the effect, in Chittagong at any rate, of establishing an occupancy right. The question then would be—

What privileges these ryots were to enjoy, and should the twelve-year ryots have higher ones? He was of opinion that before Act X of 1859 the zemindar was not legally entitled to enhance, except in relation to the average rates in the neighbourhood; but all ryots not specially privileged were bound to pay at those rates if the zemindar demanded it.

The law should distinguish between the cases in which the zemindar's cause of action affected only individual ryots and those in which he claimed a general increase on general grounds.

He should be at liberty to sue *individuals* on the ground that they were paying less than the rates in force for the neighbourhood, or that they held land for which they were not paying rent at all; but the question remained—How should he proceed when he sought to enhance the rates of a village or tract?

There were two possible methods of effecting this. He might proceed either by collective suit in the civil courts, or by appealing to the Government to settle his estate. If the former course was thought best, rules should perhaps be laid down in the law for the guidance of the courts; but these were not so necessary if the latter alternative should find favour with the Commission. The general result in either case would be a reversion to the old principle of pergunnah, or rather perhaps now-a-days of village, rates, to which all ordinary rents should conform.

It would be very difficult to lay down hard-and-fast rules for ascertaining this standard rate; and on the whole he was inclined to leave it to the discretion of the settling officer and the revenue authorities, always requiring them to show reasons justifying their conclusions in each case.

Mr. Mackenzie has since embodied his views in a note, a copy of which is attached.

The President quoted from a note to Harrington's Analysis to the effect that "no rule of adjustment could be discovered."

He then proposed an intermediate mode of procedure to that of re-settling a village in detail, man by man, viz., to have the village rates declared by the settlement officer after an enquiry as to what should be the prescribed rates. This would be a less cumbrous proceeding, and exceptional cases might be taken into court.

After some discussion as to how litigation might be discouraged, Mr. Mackenzie remarked that, while an estate was under rent settlement, the courts should not interfere, but that afterwards they might proceed as usual. They would have the Collector's finding as to rates and should be bound to apply it in the absence of special reasons for going below it. Perhaps, however, it would be best that the Collector should try all cases arising out of his enquiry compelling the institution of these within a reasonable time.

Mr. Mackenzie suggested that the Commission should consider whether it would be desirable to lay down in the law any general rule for limiting rent. It might be possible to fix a maximum limit for the actual cultivator to pay to his immediate landlord. This would help to discourage sub-letting, which he now thought it was impossible to prohibit directly. We might perhaps say that no cultivator should pay more than half the gross produce. This should be not a principle for the settlement officer to follow, but an ultimate standard for maximum rents in extreme cases.

This proposal generally found favour, but Baboo Peary Mohun Mookerjee thought it would lead to no conclusion. He quoted instances from the Chinsurah and Hooghly districts, where the rent was above half the produce. The gross revenue represented half the value of the produce of the district. If a small share of the produce were taken as a standard of full rent, this would lead to much injustice.

The President observed that he had always advocated the definition by rule of thumb of the share of the produce which a zemindar was fairly entitled to demand from a full-rate ryot, but he never said that the same proportion was to be prescribed for the whole of Bengal. He would fix different rates for different districts, or tracts of country, after full enquiry.

Mr. Field expressed a fear that if, for the classification of ryots in the existing law, a new classification be now substituted, the result will be a fresh crop of litigation—a fresh period of disturbed and uncertain ideas as to rights.

The President would for the present postpone the question of altering the prescriptive period necessary to create an occupancy ryot. If he could be satisfied that what had been proposed was workable in practice, he would vote for it. He would submit to the Commission an outline for sections to give effect to the principle that a zemindar who wished to enhance generally should apply to the Collector and pay for it. The Collector should settle the rates first, and enquire as to what was a fair rate for several classes of land under ordinary crops.

The Commission then adjourned to Wednesday, the 7th January 1880.

Tenth Meeting of the Rent Commission.

Wednesday, 7th January 1880.

PRESENT:

THE President; Messrs. Field, Harrison, O'Kinealy and Mackenzie, Baboos Brojendro Kumar Seal and Peary Mohun Mookerjee.

The propositions drafted by the President and Mr. Field upon the subject of enhancement of occupancy ryots were considered.

The first question was as to what landlords should enhance other than proprietors, tenure-holders, and under-tenure-holders, and whether the right to enchance should be limited to landlords having a permanent transferable interest, a life-interest, or at least a twenty years' farm with an unexpired term of ten years.

Mr. O'Kinealy was not in favour of class legislation, and considered that as a matter of principle the right of enhancement ought not to be restricted in the manner proposed. If it were intended to restrict the right, the restrictions should not depend on the nature of the landlord, but should be common to all. Whoever occupied the place of the landlord should be allowed to exercise this right.

Mr. Harrison contended that the evil effect of unprincipled enhancement by ticcadars who had no permanent interest in the welfare of the ryots was so great that the right ought to be taken from them.

Baboo Peary Mohun Mookerjee said a zeminder might farm his estate to a speculator in order to get a bonus from him, and the speculator would then harass the ryots. He thought a landlord before enhancing ought to have a ten years' unexpired term.

Baboo Brojendro Kumar Seal also thought it objectionable to allow the zemindar to empower speculators to enhance, but considered that there was no reason why persons deriving their power from the zemindar should not have the right to enhance if the zemindar for his own benefit had given them the authority to enhance.

The President was of opinion that no ijaradar who had less than ten years of his farm unexpired should be in a position to take advantage of the general provisions for raising rent. He thought that a zemindar who contemplated enhancement should not be allowed to get rid of the trouble and responsibility of doing so in a fair and considerate way by handing over the estate to a temporary speculator for the avowed purpose of his immediately beginning a course of enhancement. If a farmer took a lease for less than eleven years, he should not take it with the intention of running up the rents.

Mr. Mackenzie would not limit the right to enhance to any particular class of landlord, but would prefer to protect the ryots by limiting and regulating the process of enhancement open to all landlords.

Mr. Field would omit all reference to a twenty-years' term, limiting the right of enhancement by farmers and lessees to those cases in which ten years of the original term were unexpired.

The President then put the question as follows :—Shall any restriction on the right of enhancement be put upon a landlord having a temporary interest as distinguished from one with a permanent interest ?

The Members then voted—

Ayes.	*Noes.*
Baboo P. M. Mookerjee.	Mr. Mackenzie.
Mr. Field.	Baboo Brojendro Kumar Seal.
Mr. Harrison.	Mr. O'Kinealy.
The President.	

The President then proposed that any landlord should be permitted to enchance who had a ten-years' time to run, omitting all reference to this being part of a larger term.

This was agreed to.

2. After some discussion as to whether pasture lands should be subject to enhancement, the President proposed that land used for pasture should be subject to the rules for enhancement, and that illustrations should be drafted to prevent the law being misunderstood.

This was agreed to.

3. The first ground of enhancement discussed was—

(1) that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.

Mr. Field proposed to substitute for " prevailing rate" the words " rate commonly paid," stating the difficulties that had arisen in deciding what " a prevailing rate" meant. The other members of the Commission did not, however, consider that the alteration, involving as it did a change in terms that had now become well known, was desirable.

Mr. Field proposed that a rate fixed by the Collector in the manner determined below should, for the purpose of this clause, be considered a rate prevailing within the tract settled, even though rent had not actually been paid at that rate. This was agreed to.

Mr. Field proposed that the words " in the vicinity" should be substituted for " in the places adjacent."

This was agreed to.

It was proposed to substitute for " land of a similar description and with similar advantages" the words " land of the same class according to the customary classification." The majority were, however, opposed to this proposal, thinking that a sufficient case had not been made out for changing the language of the law.

4. The second ground of enhancement discussed was—

(2) that the quantity of land held by such ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid.

A question was raised whether it was necessary to provide in the Bill for the case of a lease of specified area within specified boundaries where it afterwards was found that the area within those boundaries was much larger. It was agreed, however, that it had better be left to the courts to determine whether in each case the essential condition was the area or the boundaries.

5. The third and fourth grounds of enhancement agreed upon were to the following effect :—

(that the productive powers of the land held by such ryot, as compared with such powers at the time when the rent was fixed or at any subsequent period, have been increased otherwise than by the agency or at the expense of the ryot;

(4) that the prices of produce now prevailing in the vicinity as ascertained on an average of normal years, is higher than such prices similarly ascertained prevailing at some previous time since the rent was fixed.

Mr. Mackenzie referred to Bengal Act VII of 1879 as a precedent.

It was agreed, after some discussion, that on grounds (1), (2) and (3) the zemindar should have the option of proceeding to enhance either before the Collector or in the civil court; but that on ground (4) he should proceed before the Collector only; enhancement by recourse to the civil court being intended to meet the case of enhancing the rents of one or more individual ryots on grounds applicable to their holdings only, and proceedings before the Collector being intended to meet the case of a general enhancement on general grounds.

6. It was generally agreed that some hard-and-fast line should be applied to check the amount of enhancement. Mr. O'Kinealy, however, would not limit enhancement on grounds (1) and (2), but only on grounds (3) and (4). Mr. Harrison, too, disapproved of maximum limit under heads (1) and (2) as in the case of an occupancy right being acquired in chur lands originally leased for a mere quit-rent, the maximum rent would be most inadequate.

It was finally agreed that "the enhanced rent shall not be more than double the old rent on grounds (3) and (4), and when the enhanced rent is to the old rent in a higher ratio than three to two, the increase may be made progressive" (*russudee*).

Mr. O'Kinealy was in favour of enacting that the increase in the latter case *must* be made progressive. It was, however, agreed to leave this discretionary with the court or Collector. It was also agreed that "in the case of enhancement under (2), (3) and (4), the proportionate increase of the rent of a ryot having a right of occupancy shall not in any case be higher than the ascertained proportionate increase of area, productive power, or price, respectively." Mr. Field thought (2) and (3) might be omitted as being by necessary inference contained in the rule itself, but the President and Mr. Mackenzie opposed the omission, and the clause was left as above.

7. It was then proposed that the comparison under heads (3) and (4) should not be carried back further than 12 years.

Mr. O'Kinealy and Mr. Harrison were very strongly opposed to this. They contended that it would be unfair to the ryots as well as zemindars. It would drive a zemindar to frequent enhancements, and bear heavily on those landlords who were best entitled to consideration, viz., those who only enhanced rents after long intervals. The periods for comparison must be left to the Collector settling the rates, the years selected for comparison being normal years at or near the time when rates are previously fixed. The proposal was abondoned.

The Commission adjourned to the following Friday.

Eleventh Meeting of the Rent Commission.

Friday, the 9th January 1880.

PRESENT:

THE President; Messrs. Field, Harrison, O'Kinealy and Mackenzie, Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Mohini Mohun Roy.

THE subject of enhancement was resumed and the fifth proposition on the printed paper was considered. The first point was as to what notice should be served when a landlord sought to enhance by proceedings before the Collector.

Baboo Brojendro Komar Seal thought that each ryot should he served with a separate notice.

Mr. O'Kinealy was of opinion that no notices were necessary.

Mr. Field remarked that a preliminary notice was in accordance with the custom of the country, and served to prepare the ryot for what was coming. He thought that, before the Collector actually commenced proceedings, the ryot should exactly know what was claimed from him and have a fair opportunity of agreeing or otherwise. He would thus be protected from being harrassed. The zemindar ought to put in complete jumabundi, and the ryot would then have every facility for objecting or agreeing.

Baboo Mohini Mohun Roy pointed out that no notice was required by the Chota Nagpore Landlord and Tenant Act, 1879.

Mr. Mackenzie approved of the Chota Nagpore procedure. The Collector ought not to be tied down to any particular form of notice or manner of service. The zemindar himself might be required to put in any particulars, but the Collector should not be bound to serve notice in any particular way.

Mr. Harrison concurred with Mr. Mackenzie; it was desirable to avoid the risk of the proceedings being declared invalid *ab anitio* owing to some technical defect of form.

The President was of opinion that when a zemindar had to enhance a whole village, he should be bound to give notice through the Collector in some form or other of what he demanded from each ryot, so that every one might know the precise claim made upon him. The ryots who came in and agreed should have their costs. The grounds of enhancement and the specification demands might be posted up together, but the notice should state specifically what was demanded of each ryot.

In the discussion that ensued some of the members of the Commission assumed that the action of the Collector was to depend upon the discretion of the revenue authorities. Mr. Field on this stated that he had not understood that the Collector's action was to be discretionary. If the Collector were not bound to proceed upon an application made to him, the result would be that all enhancement on the fourth ground would depend upon the will of the revenue authorities, seeing that it had just been settled that proceedings to enhance on this ground should not be had in the civil court. The existing right to proceed on this ground in the civil court might not be worth much, as the present law was practically unworkable. Still the zemindars might object to have this absolute right taken away, when the substitute offered them depended for its exercise on the consent of the revenue authorities.

After some discussion it was agreed that the zemindar should have as absolute a right of putting the Collector in motion as he now has of setting in motion the civil court. It was further agreed that in his application to the Collector he should set forth his grounds of enhancement, and when he claimed to enhance on any of the first three grounds that he should with his application file a jummabundi showing his enhanced demand upon each tenant. That this jummabundi should be served through the Collector by a general notice, and each ryot might have a copy of the entry affecting him on payment of four annas. If on the publication of this jummabundi the majority of the ryots agreed to the landlord's terms and only a few opposed, it might not be worth while for him to go further before the Collector; he might then start cases *de novo* against the recusants individually in the civil court, abandoning the proceedings before the Collector.

Mr. Mackenzie thought that the zemindar should bear a portion of the costs of the enquiry. As to settling individual rents, a general *nirikh* would, in the first instance, be enough. The Collector could afterwards, if necessary, be asked to apply this *nirikh* to individual cases, and then a general notice might issue.

Mr. Field agreed to draft sections to the above effect.

3. Baboo Peary Mohun Mookerjee thought the ryots should pay costs of the jummabundi. He thought the difficulty would not be removed unless a more definite mode of declaring a fair and equitable rate was laid down. The mode proposed was complicated and as impracticable as the existing law. Some instructions as to how the inquiry was to be made should be specifically laid down, and the local classifications of land should be recognized.

The other members of the Commission, however, did not consider this desirable, and the President, while considering it most desirable, feared that the idea must be abandoned as impracticable. The draft sections would provide as far as necessary for taking evidence, and the superior revenue authorities would supervise the proceedings as in the case of re-settling a Government estate.

4. Mr. Field then proposed to allow the Collector to intervene and fix rates *suo motu* in the event of disputes dangerous to the peace, providing, however, as a safeguard that when the Collector proposed to act in any case, he should first record his reasons and submit them to the Board or Government, taking no action until he had received superior sanction.

Mr. O'Kinealy and Mr. Harrison questioned the necessity of this. It was introducing a novel principle, and the necessity for it should be very fully established. Moreover, the subject had already been legislated for in Regulation V of 1812. Mr. Field's proposal as guarded by him was agreed to.

5. Mr. Field then pointed out that when it was settled that farmers with an unexpired term of less than ten years might not enhance, a distinction was expressly made between enhancement of individual tenants' rent through the civil court and general enhancement by the Collector. Were farmers to be debarred from both these alternatives?

It was agreed that the right of enhancing the rents of individuals by notice and suit in the civil court ought not to be restricted. The restrictions should only extend to setting in motion the new jurisdiction vested in the revenue officers.

6. The question was then raised whether, when the Collector had fixed the rates of rent, an appeal should be allowed, and, if so, whether to the Commissioner or to the Board. It was after some discussion agreed that the proceedings should in all cases be submitted for revision by the superior revenue authorities according to such rules as the Board might lay down. Two months should be allowed to any person interested to object to the Collector's rates, and the Collector should send up with the proceedings all objections preferred within that time.

The costs of determining the general rates were to be borne by the landlord, but in applying these rates to individual cases, if it was found necessary to resort to the Collector a second time, he should pass such orders regarding the costs of the further proceedings as might seem equitable, subject to the limit that no individual ryot could be called upon to pay as costs more than one year's rent at the enhanced rates.

7. The rates when settled (it was agreed) should stand good for ten years, except in cases of diluvion or alluvion.

8. It was also agreed that there shall be no enhancement when there is a written lease for a term certain, or where the parties hav[illegible]acted against enhancement.

The Commission adjourned to the follo[illegible] Tuesday.

Twelfth Meeting of the Rent Commission.

Tuesday, the 13th January 1880.

PRESENT:

THE President; Messrs. Field, Harrison, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Mohini Mohun Roy.

Mr. Mackenzie was unable to remain after 3-30, and therefore the transferability of ryots' holdings was briefly discussed, and the Commission adjourned to the following Friday.

Thirteenth Meeting of the Rent Commission.

Friday, the 16th January 1880.

PRESENT:

THE President; Messrs. Field, Harrison, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Mohini Mohun Roy.

The subject of the method of enhancing the rent of tenure-holders liable to enhancement was first considered.

2. The President pointed out that a difficulty would be experienced by a zemindar who was equitably entitled to an enhanced rent owing to the intervention of tenure-holders between him and the ryots. He was only in direct relations with the tenure-holders; and if the latter would not enhance the rent of the ryots, how was the landlord to prove what was a fair and equitable rent to be paid by them? Accepting the principle which had already been adopted by the Legislature, that the tenure-holder was entitled to 10 per cent. profit on his collections, how was the zemindar to prove what the tenure-holder's collections should reasonably be, unless he could set some machinery in motion to ascertain what the ryots ought to pay him? Rents so ascertained would not be binding against the tenure-holder, unless the tenure-holders chose to enforce them; but the tenure-holders should be made parties to the Collector's proceedings as they would benefit by having the rates determined. The costs of the proceedings should fall on the landlords and not on the tenants as before agreed to, but the tenure-holders being regarded as parties should bear their share in these.

Mr. O'Kinealy was not aware that there was any difficulty, as the law now stood, in getting enhanced rent from under-tenure-holders.

Baboo Peary Mohun Mookerjee observed that the present law was a dead letter so far as it rendered tenures liable to enhancement. In Hooghly and Burdwan there were no tenures which were liable to enhancement.

Mr. Field said the important question was—Were they to empower the superior landlord to compel the *mesne* landlord to proceed to enhance the rents of the ryots?

Mr. O'Kinealy would enhance on the lines of the old regulations as explained by the Privy Council. He had never heard that they were unfair or defective, and he would not innovate upon them.

Mr. Harrison contended that the provisions of the present regulations were far too vague and indefinite; and if a Bill, such as that which was being drafted, became law, some elucidation of the principles on which tenure-holders could be enhanced was absolutely necessary, as we were creating a new and large class of statutory tenure and under-tenure-holders. He took the case contemplated by section 18 of Mr. Mackenzie's draft Bill: An occupancy ryot with the zemindar's consent sub-lets for twelve years, making his sub-lessee thereby an occupancy ryot and himself becoming a tenure-holder. If the new tenure-holder were to collude with the new occupancy ryot never to raise his rent, the zemindar would loose all power of enhancement.

Mr. Mackenzie thought that under the circumstances the zemindar ought to loose the power as he gave his consent to sub-letting with his eyes open.

The President could not concur. He thought the law required to be made definite. Speaking from cases within his own knowledge, he said that at present the law was so uncertain that people were forced to litigate, as they could not otherwise ascertain their rights. Some procedure should be devised for the zemindar's enhancement of the tenure-holder.

Baboo Mohini Mohun Roy thought that the present allowance of 10 per cent. was sufficiently definite.

Baboo Brojendro Kumar Seal said that this was only in the absence of a customary rate. In many cases the tenure-holder was entitled by custom to a much larger profit than 10 per cent.

Mr. Harrison said that this did not remove the difficulty as to reaching the ryots. In large tracts of country—Orissa, Midnapore, Chota Nagpore, and elsewhere—it was customary to collect through village headmen under the designation of jotedars, jote-mundles, mundles, surburakars, &c. All these men under the new Bill would become tenure-holders, and it would be impossible to refuse a zemindar all rights of enhancement, except in concert with these middlemen.

After some further discussion it was resolved to adopt Article 23 of the Digest altered to the following effect:—

"In any case in which the rent of a dependent talookdar or other person possessing a permanent transferable interest in land intermediate between the proprietor and the ryot is liable to enhancement, such rent may be enhanced up to the limit of the customary rates payable by the holders of similar tenures in the neighbourhood; and where no such customary rates exist, up to such a limit as that his profit shall not exceed 10 per centum on his receipts after deducting the expenses of collection.

Mr. O'Kinealy agreed as this was the existing law.

It was also agreed that in no case shall such rent be enhanced to more than double the old rent.

It was then further settled that in order to ascertain what were the receipts of the mesne landlord, the superior landlord might move the Collector to determine the rents payable by the ryots as he might do if directly in receipt of rent from them.

Mr. Field observed that a superior landlord in proceeding against a tenure-holder might or might not make the ryots parties. Where the ryots were not made parties, he ought to go to the civil court only, and the costs should follow the result. When the superior landlord proceeded against both the mesne landlord and the ryots, Mr. Field thought the superior landlord should be permitted to go to the civil court in those cases in which the person in receipt of rent from the ryots could go to the civil court.

Mr. O'Kinealy pointed out that the superior landowner having no cause of action against the ryots his suit against them would be dismissed.

A majority of the Commission, however, dissented from Mr. Field's view, and it was resolved that the superior landlord when he wished to have the rents payable by the cultivators determined should be required to go to the Collector in all cases.

It was also resolved, Baboo Peary Mohun Mookerjee dissenting, that when the superior landlord proceeded against the tenure-holder in the civil court, notice should be necessary; and that when he proceeded before the Collector, the apportionment of costs should be left to the Collector's discretion.

Mr. Harrison remarked that there was one point which was still left unsettled. It had been arranged that a landlord moving the Collector should apply, in the first instance, to have the *rates* fixed, leaving the parties to adjust the rents on that basis. But there was a great difference in a zemindar's position, who was in immediate contract with his ryots and one who approached them through middlemen. In the case of middlemen it was no use for the zemindar to get the rates fixed; what he required was a jumabundi of rents payable by ryots. He would not be in a position to settle with the tenure-holder until the rents of the ryots were determined. In the case of a middleman, therefore, the application to the Collector must usually be to determine rents, and even in the event of there being no middleman, it would often be to the interest of the landlord to get the rents determined at once, that is to say, in cases where he knew that the ryots would not come to terms. The check upon needlessly applying for a jummabundi would be the augmented costs. This was agreed to, and it was resolved that it should be optional for the zemindar to apply for rates or for a jummabundi at once both in the cases of there being a middleman and no middleman.

5. Mr. Field's draft sections dealing with the use of land for building purposes were next considered.

These sections were considered subject to what might be settled hereafter about agricultural improvements.

All, with the exception of Baboo Peary Mohun Mookerjee, approved of a ryot being allowed without his landlord's permission to erect upon his land a dwelling-house for the use and occupation of himself and his family.

It was resolved that a zemindar whose ryot after notice continued to use the land illegally for general building purposes might apply for an injunction; and in the event of the court granting the injunction, and of the ryot defying the court, he might apply for ejectment. But there should be no ejectment save for disobeying the injunction of the court.

It was also resolved that if no notice was given to the ryot, and there was no evidence of the zemindar's knowledge, the ryot should be entitled to compensation in the event of his being required to restore the land to its former condition.

It was agreed that a zemindar who allowed a house to be built should be permitted to claim rent at the same rate as for building sites.

6. The Commission adjourned to the following Friday.

Fourteenth Meeting of the Rent Commission.

Friday, the 23rd January 1880, 3 *p. m.*

PRESENT:

THE President; Messrs. Field, Harrison, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal and Mohini Mohun Roy.

It was resolved that Mr. Field's proposed sections on *merger* should be adopted with the alteration that, unless a proprietor of an estate who becomes the owner of a tenure in such estate signifies by registration and notification through the Collector that he has a contrary intention, the tenure shall be presumed to be merged.

2. It was then proposed that the time for acquiring the right of occupancy created by Act X of 1859 and Act VII (B.C.) of 1869 shall not be reduced from twelve to three years.

Ayes.	*Noes.*
The President.	Mr. O'Kinealy.
Mr. Field.	Baboo Brojendro Kumar Seal.
" Harrison.	Mr. Mackenzie.
Baboo Mohini Mohun Roy.	

The Commission adjourned till the following Tuesday.

Fifteenth Meeting of the Rent Commission.

Tuesday, the 27th January 1880, 3 *p.m.*

PRESENT:

THE President; Messrs. Field, Harrison, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Mohini Mohun Roy.

The following propositions were carried:—

1. That a ryot who has held his land for three years, but for less than than twelve years, shall not be evicted otherwise than (*a*) for non-payment of rent, or (*b*) beach of an express condition of his lease, or (*c*) refusal to pay enhanced rent demanded of him; and if evicted on ground (*c*) he shall be entitled to compensation.

Ayes.	*Noes.*
The President.	Baboo Peary Mohun Mookerjee.
Mr. Harrison.	" Mohini Mohun Roy.
" O'Kinealy.	Mr. Field.
" Mackenzie.	
Baboo Brojendro Kumar Seal.	

2. That the measure of this compensation shall be the annual enhanced rent demanded.
Carried unanimously, Baboo Peary Mohun Mookerjee not voting.

3. That one year's enhanced rent shall be allowed as compensation.
Carried unanimously, Baboo Peary Mohun Mookerjee not voting.

4. That a landlord shall have the right in every case to sell the statutory right of occupancy in execution of a decree for arrears of rent accruing upon the land in respect of which such right exists.
Carried unanimously.

5. That in those cases in which the landlord can now eject for non-payment of rent, he shall not be allowed to exercise this right of ejectment as well as the right of sale.

Ayes.	*Noes.*
The President.	Baboo Peary Mohun Mookerjee.
Mr. Harrison.	" Mohini Mohun Roy.
" O'Kinealy.	
" Mackenzie.	
" Field.	
Baboo Brojendro Kumar Seal.	

6. That the landlord may at his option proceed to bring the right of occupancy to sale *or* proceed against the person, movable property, *or* other immovable property, of the judgment-debtor.
Carried unanimously.

7. That the bidding at the sale of right of occupancy shall be open to all persons without restriction.

Ayes.	*Noes.*
The President.	Baboo Peary Mohun Mookerjee.
Mr. Harrison.	" Brojendro Kumar Seal.
" Field.	
" O'Kinealy.	
" Mackenzie.	
Baboo Mohini Mohun Roy.	

8. That a ryot having a right of occupancy shall not be allowed to mortgage it.
Carried unanimously.

9. That the statutory right of occupancy shall be transferable by private sale without the landlord's consent in those cases in which it not now so transferable.

Ayes.	*Noes.*
The President.	Baboo Peary Mohun Mookerjee.
Mr. O'Kinealy.	" Mohini Mohun Roy.
" Mackenzie.	Mr. Harrison.
" Field.	
Baboo Brojendro Kumar Seal.	

The Commission adjourned till the following Friday.

Sixteenth Meeting of the Rent Commission.

Friday, the 30th January 1880, 3 p. m.

PRESENT:

THE President; Messrs. Field, Harrison, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Mohini Mohun Roy.

The following propositions were discussed and settled :—

1. That all tenures, under-tenures, holdings transferable by custom, and the statutory right of occupancy shall be hypothecated for the rent therof, and that such rent shall be a first charge thereupon.

Carried unanimously.

2. That the landlord having obtained a decree for arrears of rent due upon any such tenure, under-tenure, transferable holding, or land in which a right of occupancy has been acquired, shall be bound to bring such tenure, under-tenure, &c., to sale in execution before taking out execution against the person, movable property or other immovable property of the judgment-debtor.

Carried unanimously. [*N. B.*—The resolution of the last meeting on this point was thus deliberately reversed].

3. If, when any such tenure, under-tenure, transferable holding, or right of occupancy is put up to sale in execution, no bid is made, the landlord shall bid, and failing to do so, shall not be entitled to take out execution against the person, movable property or other immovable property of the judgment-debtor.

Carried unanimously.

4. The landlord may, upon grounds similar to those upon which *attachment before judgment* is allowed by the Code of Civil Procedure, procure the attachment of any other immovable property of the judgment-debor pending the sale of the tenure, under-tenure, transferable holding, or right of occupancy.

Carried unanimously.

5. When a tenure, under-tenure, transferable holding, or right of occupancy has been sold in execution, and after satisfying the decree executed, there remain surplus proceeds of the sale, the landlord shall out of such surplus sale proceed be paid any rent of such tenure, under-tenure, &c., which has accrued after the last arrear recovered by the decree: provided that such landlord shall not so recover any rent which he could have included, but did not include, in his original claim for rent: and provided also that not more than six months' rent which fell due after the date of the final decree, shall be so recovered. In case of a dispute as to payment the court shall decide.

Carried unanimously.

6. When a landlord serves upon a ryot not having a right of occupancy a notice requiring him to quit or pay a specified increased rent, such ryot, if he do not quit, shall be liable to pay the increased rent specified in such notice up to the limit of double the former rent.

Carried—Messrs. O'Kinealy and Field dissenting.

7. No provision shall be made for giving compensation for improvements to ryots who have held for less than three years.

Carried unanimously.

8. Draft sections shall be prepared providing compensation for improvement in the case of ryots evicted after holding for three or more years, but less than twelve years.

Carried—Baboos Mohini Mohun Roy and Peary Mohun Mookerjee dissenting.

The Commission adjourned till 3 P. M. on the following Tuesday.

Seventeenth Meeting of the Rent Commission.

Tuesday, the 3rd February 1880, 3 p. m.

PRESENT:

THE President; Messrs. Field, Harrison, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Mohini Mohun Roy.

Mr. Field's draft of sections dealing with the enhancement of money rents was taken up and part of it considered.

As regards ground 4, it was contended that the words "otherwise than by the agency or at the expense of the ryots" be omitted, as a general increase in prices of produce could never be due to the agency of the ryots of a small local area. It was, however, pointed out that the ryots might combine to dig a canal or construct a road, and Mr. Mackenzie drew attention to a passage—pages 180-181 of the Administration Report of 1871-72—which showed that Sir George Campbell had distinctly contemplated this contingency, and had justified the imposition of the cess on the ryots on the ground that they would thereby obviate their liablity to enhancement so far as due to all improvements connected with the road cess.

Mr. Harrison then contended that, in the face of this declaration, it was absolutely indispensable that the Commission should plainly state their views as to whether payment of the cesses was to obviate liability to enhancement. It should be decided one way or the other, and not left to be fought out at enormous expense in the courts. He thought the principle of allowing such payment to obviate liability to enhancement was unsound, and as the case of ryots combining to construct a canal or road was not one likely to occur, and, if it occurred, would only have an infinitesimal influence on prices of neighbouring markets, he would omit the words altogether. This was, however, negatived.

Mr. Field expressed an opinion that it would be wiser not to legislate on the subject at all. He doubted if it could ever be shown that a rise of prices in any locality was solely due to public works carried out by the proceeds of local taxes, or, where such rise was due to several causes, how much was due to this particular cause. If any rule were made by the Legislature on such a mixed subject, the fair rule would be that a rise of prices due to works carried out by local taxation should afford neither a ground of enhancement to the zemindar nor an answer to enhancement to the ryot. To enact that the ryot, who has paid a moiety of the cost of such works, may not plead that they were carried out, and the rise of prices so brought about partly at his expense, while the zemindar is in no way debarred from benefiting in his enhancement claims by such a rise so brought about, was to give the zemindar the full benefit of the taxes paid by him and to deny to the ryot the benefit of the taxes paid by him; nay it was a further injustice, for it gave the zemindar the benefit of the taxes paid by the ryot.

Messrs. Mackenzie and O'Kinealy concurred in Mr. Field's view.

Mr. Harrison then proposed to add an illustration to ground No. 4 so as to make it clear that contribution to road cess and public works cess was not to be a ground of exemption from liability to enhancement.

Ayes.	*Noes.*
The President.	Mr. Mackenzie.
Mr. Harrison.	„ O'Kinealy.
Baboo Peary Mohun Mookerjee.	„ Field.
„ Mohini Mohun Roy.	Baboo Brojendro Kumar Seal.

The proposition was carried by the President's casting vote.

Mr. Field requested Mr. Harrison to draft the precise words in which he would frame his illustration before the next meeting, and Mr. Harrison agreed to do so.

With reference to explanation I (*b*), Baboo Mohini Mohun Roy proposed—

That no restriction should be put on the right of farmers and ijaradars to enhance.

Ayes.	*Noes.*
Mr. O'Kinealy.	The President.
„ Mackenzie.	Mr. Field.
Baboo Mohini Mohun Roy.	„ Harrison.
	Baboo Peary Mohun Mookerjee.
	„ Brojendao Kumnr Seal.

The Commission adjourned till the following Friday.

Eighteenth Meeting of the Rent Commission.

Friday, the 6th February 1880.

PRESENT:

THE President; Messrs. Field, Harrison, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Mohini Mohun Soy.

Articles 37 to 40 of the Digest were discussed.

It was agreed that in Article 37 for the words "permanent settlement of such province," the words "permanent settlement of Bengal, Behar and Orissa made in 1793" should be substituted.

Baboo Brojendro Kumar Seal suggested for consideration whether it would not be proper to substitute a fixed period of 60 years for one which constantly increased as years rolled by. It was anomalous that the very law which absolutely protected a ryot from enhancement in 1859, on the ground of his having held at a uniform rate for a period of *sixty-six years*, should not give similar protection to his neighbour in 1880 though he paid at a uniform rate for more than *eighty years*. Under the law, if the zemindar mortgaged his estate to a ryot and did not choose to redeem within 60 years, he would lose his right to receive any rent from any ryot. The majority were, however, against this suggestion being adopted.

It was also agreed to adopt the proposal of Mr. Smith, Officiating Commissioner of Orissa, to the effect that in temporarily settled estates all rights to hold at fixed rates beyond the terms of the sanctioned settlement be disallowed, unless such right has been expressly sanctioned by the authority competent to sanction the permanent settlement of the estate.

Baboo Mohini Mohun Roy proposed to alter the presumption that where a ryot's rent has not been changed for 20 years the land has been held at that rent from the time of the Permanent Settlement.

Ayes.	*Noes.*
Baboo Mohini Mohun Roy.	The President.
„ Peary Mohun Mookerjee.	Mr. Harrison.
	„ Field.
	„ O'Kinealy.
	„ Mackenzie.
	Baboo Brojendro Kumar Seal.

"Ryot," it was proposed, should be defined as one who cultivates land with his own hands, or through a member of his family, or by hired labour, or at whose sole risk the crop is grown.

It was also proposed that the payer of rent in kind shall not be regarded as the ryot, unless the person to whom he pays rent possesses a permanent and transferable interest in the soil, or is a farmer.

Both these propositions were carried unanimously.

The following proposition was carried, Mr. O'Kinealy and Baboo Brojendro Kumar Seal dissenting, and Mr. Mackenzie not voting:—

That an occupancy ryot shall not, except under special circumstances, be allowed to sub-let.

The following proposition was carried unanimously:—

That if an occupancy ryot does sub-let, he shall be held to have transferred to his lessee his right of occupancy in the lands sub-let; if these lands do not amount to the whole of the ryot's holding, the persons to whom he sub-lets shall be jointly and severally liable with him to the zemindar for the rent.

The Commission adjourned till the following Tuesday.

Nineteenth Meeting of the Rent Commission.

Tuesday, the 10th February 1880.

PRESENT:

THE President; Messrs. Field, Harrison, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Mohini Mohun Roy.

Mr. Field's sections on the enhancement of money rent were further discussed.

It was agreed to adopt Mr. Harrison's proposal that when rent is enhanced upon the fourth ground the Collector shall deduct from the increment to which the landlord would otherwise be entitled the amount payable by the ryot as cesses at maximum rates on his former rent.

Illustration.—A, the landlord, proves that prices have increased 50 per cent. since B's rent was fixed at Rs. 8. B's rent is therefore enhancible to Rs. 12, but he is already liable to pay Rs. 8-4 for rent and cesses. Only Rs. 3-12 will therefore be added to his rent, making his new rent Rs. 11-12, on which amount he will also be liable to pay cesses according to law.

Baboo Peary Mohun Mookerjee expressed his dissent from the latter part of the proposition and proposed that, in as much as the road cess went to the maintenance not only of roads which communicated with marts and trading towns, but also of roads which improved the means of communication within the villages themselves, not more than half the amount of road cess payable by a ryot should be deducted from the enhanced rent. This proposition, however, was not agreed to by the other members.

It was at first agreed that the Bill shall provide forms of notice of enhancement, containing substantially the same particulars as mentioned in section 24; but, on further consideration of the whole subject, it was settled, upon the suggestion of Baboo Mohini Mohun Roy, that notices of enhancement served through the court should be done away with, and that if the parties cannot agree to the enhanced rent, the first step by way of having notice served from the court shall be the filing of a plaint, and that this plaint shall be filed one month sooner than the present enhancement notice is served, so as to give time for service of summons about the same as the notice was formerly served, that is, that the plaint shall be filed four months from the end of the year in order to affect the rent of the year next ensuing.

In discussing the enhancement procedure, which is to apply only to ryots having a right of occupancy, it was agreed that the entry of a ryot's name in the *jamabandi* filed by the zemindar with his plaint shall be deemed an admission on his part that such ryot has a right of occupancy in the land specified opposite his name.

It was agreed that the table of rates prepared under Rule (*b*), section 28, shall be binding on the civil courts.

The Commission adjourned till the following Friday.

Twentieth Meeting of the Rent Commission..

Friday, the 13th February 1880, 3 *p. m.*

PRESENT:

THE President: Messrs. Field, Harrison, O'Kinealy and Makenzie, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Mohini Mohun Roy.

Mr. Field's sections on the enhancement of money rents were further discussed and settled.

The Commission adjourned till the following Tuesday.

Twenty-first Meeting of the Rent Commission.

Tuesday, the 15th February 1880, 3 *p. m.*

PRESENT:

THE President: Messrs. Field, Harrison, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee, and Mohini Mohun Roy.

Mr. Field's sections on occupancy ryots were considered.

It was proposed that if a ryot transferred his land before the completion of the twelve years with the sanction of his zemindar the time during which the transferer has held may not be added to the time during which the transferee has held.

Ayes.	*Noes.*
Mr. O'Kinealy.	The President.
„ Field.	Mr. Harrison.
Baboo Brojendro Kumar Seal.	„ Mackenzie.
	Baboo Peary Mohun Mookerjee.
	„ Mohini Mohun Roy.

It was then settled that such time may be added if the landlord expressly consent in writing to its being added.

It was proposed that a zemindar may, by a contract duly registered at the time of the commencement of the tenancy (and not otherwise), provide against a ryot requiring a right of occupancy.

Ayes.	*Noes.*
The President.	Mr. Harrison.
Mr. Field.	„ O'Kinealy.
Baboo Brojendro Kumar Seal.	„ Mackenzie.
„ Peary Mohun Mookerjee.	
„ Mohini Mohun Roy.	

It was agreed that a right of occupancy should be heritable according to the ordinary law of inheritance.

It was proposed that an occupancy ryot be liable to ejectment for breach of stipulation in respect of which such ryot and his landlord have contracted in writing.

Ayes.	*Noes.*
The President.	Mr. O'Kinealy.
Mr. Field.	„ Mackenzie.
„ Harrison.	
Baboo Brojendro Kumar Seal.	
„ Peary Mohun Mookerjee.	
„ Mohini Mohun Roy.	

The Commission adjourned till the following Friday.

Twenty-second Meeting of the Rent Commission.

Friday the 20th February 1880.

PRESENT:

THE President; Messrs. Field, Harrison, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal and Peary Mohun Mookerjee.

Considerable discussion took place upon a suggestion of Mr. Harrison's that the actual cultivator should in every case be treated as the occupancy ryot, occupancy ryots who had sub-let being converted into middlemen.

Mr. Field's sections dealing with occupancy ryots were further considered.

Mr. Mackenzie proposed—

(a) that any ryot having a right of occupancy at the time of the commencement of the Act shall be at liberty to sub-let his lands to a sub-ryot, but the rent payable by such sub-ryot shall not in any case be more than *ten* per centum above the rent payable by such ryot to his landlord.

(*b*) That no sub-ryot existing at the time of the commencement of the Act shall be at liberty to claim under this rule any abatement of rent actually paid by him at such time; but every such sub-ryot shall be protected against arbitrary ejectment by his landlord so long as he pays such rent.

Ayes.	*Noes.*
The President.	Mr. Field.
Mr. O'Kinealy.	„ Harrison.
„ Mackenzie.	
Baboo Brojendro Kumar Seal.	
„ Peary Mohun Mookerjee.	

It was then proposed that the principle of Mr. Mackenzie's propositions so carried be extended to all occupancy ryots, whether their rights accrued before or after the passing of the Bill.

Ayes.	*Noes.*
Mr. Harrison.	The President.
„ O'Kinealy.	Mr. Field.
„ Mackenzie.	
Baboo Brojendro Kumar Seal.	

Baboo Peary Mohun Mookerjee did not vote.

The Commission adjourned till the following Tuesday.

NOTE.

Mr. Field subsequently drew up the following statement of his reasons for dissenting from Mr. Mackenzie's proposition:

He did not see his way to accepting it as a solution of the real difficulty. Let A be the proprietor, B be the ryot, and C the sub-ryot. The question is whether B or C shall pay according to the table of rates—shall pay what may be called Occupancy Rates. Under the proposed rule B will pay them, and C will pay ten per centum more. Thus, there will be a double standard of rent; and under the influence of an increasing population, and the competition engendered thereby, the tendency will be towards the higher rent. B is a middleman. Now, to improve and secure the position of the actual cultivator is a wise object of legislation for an agricultural community in a country like this where manufacturing enterprize or the pursuits of commerce afford but a small field of employment for those whose lot is dissevered from the cultivation of the soil. In such a community men like B are the drones of society, and the creation of such a class ought not to be encouraged. To encourage it is not to promote the object of wise legislation. If the actual cultivator has an hereditary lien on the land upon which he is born; if the possession and occupation and cultivation of the soil for a brief period of years is, according to the arguments addressed to the Commission, sufficient to call this dormant but inherent lien into activity and life, it is difficult to see why the son of the soil who holds and cultivates land under a *middleman* should be in a worse position than his brother who holds and cultivates under a *zemindar*. Is there anything in the position or antecedents of the middlemen which entitles them to be dealt with less tenderly than the zemindars? It is said not to be politic that zemindars should let their lands as they please. Can it be argued for any good reason that it is politic that middlemen should do so? Mr. Field believed that to carry this proposed rule will be to lose sight of the true policy which ought to be borne in view, that is, to raise the *status* and secure the position of the actual cultivator: he would, in order to effectuate this policy, benefit the actual cultivator wherever he found him, whether holding under a zemindar or under a middleman. If the proposed rule is carried into effect in the case that had been brought to the notice of the Commission, it is material to see what the effect will be. B now pays eight annas per *bigha* to A, and receives Rs. 3-8 per bigha from C. Under the new procedure, B's rent may be enhanced to double its present amount, *i. e.*, to one rupee per bigah. Now B cannot in future take from any new sub-ryot more than one rupee plus one-tenth = Re. 1-1-$9\frac{3}{5}$ per bigha. No harm will be done to B, it is said, because C and his fellows will not be entitled to have their rents reduced from Rs. 3-8 to Re. 1-1-$9\frac{3}{5}$; but can it be doubted that C and his fellows will throw up their land in order to take land in the vicinity at about a third of the rent they were previously paying? The result will be that more than two-thirds of B's rental will be transferred from him to his tenants. Mr. Field has not much sympathy for middlemen; and in carrying out the policy he has mentioned if the interests of the actual cultivators and those of the middlemen come into conflict so that either must suffer, he would prefer that the interests of the middlemen shall suffer rather that those of the cultivating ryots. But the above result will be a confiscation of existing interests, which legislation would scarcely be warranted in carrying into effect. To legislate for the future is one matter, but to interfere with vested rights is another—is a course that can be justified only upon the strongest grounds, and such grounds are here wanting.

The proposed rule will knock on the head the *bhag-jote* system, which is customary more or less in every district in Bengal.

On the other hand, to treat C as the occupancy ryot—as the person liable to pay the occupancy rates—will be a consistent effectuation of the policy already mentioned. It will avoid the confusion and disadvantages of a double standard of rent and two grades of cultivators. If C's rent remain unchanged, the new Act will not injuriously affect A and B by altering their present position to their disadvantage. Then if C's rent is enhanced under the new procedure, there will be an increment to be divided. Let that increment be divided in the proportion in which A and B now share what C pays in the shape of rent, or in any other proportion that is fair and reasonable. A gets no increase under the existing law. He will be better off under the new Act by so much as his share of the increment amounts to. He cannot justly complain that he is not allowed to pocket the whole of the increment, for he cannot justly ask the Legislature to ignore the fact that the existence of a middleman necessitates the division of what can properly be taken from C as rents between two persons, instead of one getting the whole. It is contrary to the true principle of the well-being of an agricultural society that a number of middlemen should exist between the actual cultivator and the proprietor. The wisest method to discourage such an injurious condition of affairs is so to legislate that the rent of all cultivators shall be as nearly as possible equal, excepting of course allowed and recognized exceptions, and that this rent shall be divided amongst all who stand above the cultivating class, the shares being less as the number of sharers is greater. To allow the creation of intermediate interests, to force down the cultivator, to alter his position for the worse, is to introduce a wedge into the centre of the system which will in course of time force it in pieces.

Mr. Mackenzie records the following note explanatory of his suggestion adopted by the Commission :—

"The great difficulty which I feel in connection with this question of sub-letting by ryots is the fact that all over the country such sub-letting is practised, and has always been practised, and that it is clearly recognized by the existing law. We have before us no *tabula rasa* either in the country or in the statute-book, and I cannot myself understand how those members of the Commission who at the outset objected to correct even the demonstrable errors of Act X, on the ground that, wright or wrong, it was now law, can calmly propose to revolutionize the whole agricultural society of Bengal by sweeping away a provision of Act X which *does* recognize an existing fact.

"I do not for a moment imagine that the suggestion now provisionally adopted by the Commission is free from all objection. The whole question is involved in extreme difficulty, and any attempt at its solution must be put forward with diffidence by any person who has really tried to realize those difficulties. My present position may be explained thus—

"I am desirous of doing all I can for the actual cultivator. I would do all I can to prevent rackrenting of every sort. I think it very undesirable that a ryot should by sub-letting to rackrented korfa ryots convert himself into a mere middleman. But as a matter of fact, I find that men recognized as *ryots*, entered as such on the jummabundis of the zemindars and subordinate talookdars, do sub-let in this way, and I do not believe that any Legislature can by a stroke of the pen change the whole face of the country. If we are to endeavour to get rid of sub-infeudation of this objectionable sort, we shall only succeed by accepting patent facts, shaping our proposals so as to fit into these, and giving by law an impulse and a *tendency* in the direction which we wish to see things take. We may do what we fairly can to *discourage* this sub-letting; we cannot ignore it or change its character all at once.

"Hence I demur to the proposal that every korfa who has held 12 years shall be deemed to be the occupancy ryot of the future, the present occupancy ryot being simultaneously and *instanter* converted into a middleman. In the first place I suspect that the result of this would be that, in the greater part of the lands now sub-let to korfas, we should a year after the Act was passed have no occupancy ryots at all. There is no permanency whatever in the existing arrangements of ryots with their korfas. The latter are men of the lowest class, having no idea of fixity in their fields, and who will probably not be able to prove a 12 years' holding under any circumstances. It is, moreover, a very strong measure to say that holding during years in which the law distinctly declared that korfa ryots could *not* acquire occupancy rights shall now be held to have given such rights. If, on the other hand, korfa ryots are only now to *begin* to acquire such rights, and to take 12 years to get them, it again seems to me probable that not an occupancy ryot will eventually be found on the lands below the so-called new middlemen (*now* sub-letting occupancy ryots). It will be the easiest matter in the world to prevent the right accruing.

"Again, the process of converting the korfas at large into occupancy ryots, however it is carried out, will have the most disastrous effect upon the rents of existing occupancy ryots who till their own fields. Where the rent of a cultivating occupancy ryot is now Re. 1, that of a korfa is probably Rs. 3 or even more. It is not proposed to reduce the rate actually paid by the korfa, now made an occupancy ryot. In the course of a few years the rates of the two classes of occupancy ryot (old and new) must tend to asssimilate, and we shall have the rents of existing occupancy ryots forced up to what are now recognized as korfa rackrents. (I find, in fact, that Mr. Field distinctly contemplates that the Collector should take the *korfa* rate as the basis of his table of rates. This, I consider, would be certain to raise an agrarian revolution in many parts of Bengal, and I am tempted to say rightly so.)

"Then suppose the *new* occupancy ryot again sub-lets and makes *himself* a middleman, either the rent of the actual cultivator must be pushed higher and higher, or the profits which the zemindar and superior talookdars either actually receive or might fairly expect legally to make must be cut into for no fault of theirs. To call the lowest man, being the actual cultivator, an occupancy ryot, will not console *him* much for having to pay an impossible rent, or reconcile the zemindar to a reduction of his profits or a diminution of his powers of enhancement.

"It appears to me that the best way of stopping sub-infeudation, of discouraging sub-letting, and of encouraging and strengthening the position of the actual cultivator is to impose a legal maximum limit on rents. This can be done, I think, without upsetting the whole febric of agricultural society, and in a way to give a stimulus to all the tendencies we desire to advance.

"I propose therefore, as a general rule, to treat as ryots the existing occupancy ryots, recorded as such in the jummabundis of the zemindars and recognized middlemen and to say that they *may* sub-let to korfa ryots; but I would limit the rent demandable from a korfa ryot to a fixed percentage over the occupancy rate as determined by the Collector in our table of rates, or as actually paid by the existing occupancy ryot, I think it is perfectly certain that the occupancy ryot's rate will always be such as to divide between him and his landlord the net profits of cultivation. It will be always very far from a rackrent. If there is any doubt of this, we must make sure of the point by legislation, and I shall return to this later on. Then if the percentage over this, payable by the korfa is reasonable, the korfa also, being the actual cultivator, will hold at a reasonable rent and be placed in an improved condition. (At the President's suggestion the percentage embodied in the resolution of the Commission is 10 per cent. I do not accept that as a final settlement of this particular point.)

"This being the proposal in its crudest form, we are met at once by the fact that probably all existing korfas are paying higher rents than those demandable under the rule. To reduce those rents summarily would be hard on the occupancy ryots. This is no doubt a difficulty, but there are difficulties everywhere. The best solution seems to me to be this: The existing korfas hold either as tenants-at-will from year to year or under engagements for very limited terms. They must be bound to carry out their engagements; and I would encourage them to renew those engagements on existing terms by protecting them from arbitrary ejectment so long as they pay those rates, giving them in fact sub-occupancy rights good against the occupancy ryot, but not against his landlord. If, however, the korfa does not renew his engagement at the old rates, then the occupancy ryot would of course be able to recover no higher rent than our rule allows, if he chooses again to sub-let. But he has thus laid upon him the strongest possible inducement to take the cultivation into his own hands, and to employ his korfas as hired labourers, paying them sufficient wages. I believe this would, in most cases, be for the good of the korfas themselves and for the general good of agriculture.

"Now, having thus stated the nature of the propositions adopted by the Commission, and the theory underlying them, I must go on to say that I am prepared to admit that they do not cover all the ground. This question of sub-letting is very complex. The proposals meet sufficiently well the case of the ordinary occupancy ryot, such as he is to be found in the greater part of Bengal, *i. e.*, the man with a moderately sized holding, not much more than sufficient for the support in comfort of one family and its belongings of all sorts. It does not meet the case of the reclaiming jotedar, small capitalist, who having taken up *as ryot* originally a considerable tract of land settles other sub-ryots on it, and so by their agency brings it into cultivation and eventually ceases himself to be anything more than a rent-receiver. The incompleteness of our rent law has made it this man's interest, and the interest of his landlord also, to classify him still *as a ryot*. On the one hand, this classification deprived the cultivators under him of all rights (other than customary rights); while, on the other hand, the landlord was able to enhance his rents as those of a ryot without encountering the difficulties met with an enhancing the rents of a talookdar. In fact, however, such men are small talookdars, and ought to be treated as such. The question is how to define or distinguish them.

"I am inclined to transplant a principle from Regulation XIX of 1793, and to treat all tenures exceeding *one hundred beeghas* in area as differing in *quality* from those below that area Any man holding over one hundred beeghas is almost certainly not a cultivator himself or likely to become one. I think we might very well say that any person now classed as an occupancy ryot, who holds over one hundred beeghas of land and does not himself cultivate the *whole* of it, shall be held to be an under-tenure-holder. I would give the occupancy right to the actual cultivator under him, and if there is a sub-ryot below this last, I would apply our sub-ryot rules to that case. This would probably be found to meet the cases of the Rungpore jotedar and of the howladars.

"We should have to consider how to meet questions of existing rents, enhancement and adjustment of rents; but I do not see insuperable difficulties in the way.

"Here, again, I submit that my proposal is in practical accord with existing circumstances.

"Then I must go further and say that I think the law should lay down a maximum standard of rent for occupancy ryots. I would not allow an occupancy ryots rent to be enhanced to an amount which would be in excess of a sum equal to the value of one-fourth of the gross produce of his lands (as estimated by the Collector), if such lands were under the ordinary crop of the district. (Of course I would not allow existing rents to be *lowered* in any district). This standard limit of one-fourth might very well be made the object of the Collector's enquiries when he is called upon to draw up a table of rates. In the application of it to individual cases, it would be open to any ryot to show that he was by the rule of proportion entitled to a *lower* rate. The rule that rents could only be doubled once in ten years would prevent any violent and sudden disturbance of rents in districts where the landlord now only gets a small portion of the gross produce."

If this rule were adopted, then I think the rate of the korfa or sub-ryot might as a maximum be 20 per cent. in excess of the occupancy rates.

I would prohibit sub-letting by sub-ryots under any circumstances.

I should like the Commission to consider whether some provision could not be made for registering existing occupancy ryots in the zemindar's sherishta, and for registering as tenures holdings over one hundred beeghas.

"I desire, however, again to submit to the Commission that, while such a registration is desirable and necessary, it will only be brought about by our making it not the landlord's interest to refuse it or neglect it. If occupancy ryots are to have favoured rates, no landlord will admit them to registration if he can help it. If all permanently settled ryots are to pay the *same* rates (as I hold they should), they should *all* be protected against arbitrary eviction, and that is all that, in my opinion, a right of occupancy conveys.

"The proposals which I have from time to time submitted on this ryot question all hang together, as I venture to think, in a way that almost demonstrates the soundness of the theories underlying them. If the Commission will only come down to the recognition of occupancy rights as the *general rule*, it will, I believe, get rid safely of many complications that have already made our project of law such as we can have hope to get passed."

Mr. O'Kinealy notes that he would have voted in favour of Mr. Harrison's proposal, which he understood to be to give all cultivators a right to remain on the land as long as they paid according to the table of rates fixed by the Collector, provided Mr. Harrison could have protected the present occupancy ryots from being rackrented. If all cultivators were turned into occupancy ryots and nothing further done, then the experience of the past left no doubt on his mind, but that the rates paid by korfa ryots would in the course of a few years be looked upon as occupancy rates, and the result would be widespread rackrenting. On the other hand, Mr. Mackenzie's proposal gave nothing more to middlemen, took nothing from their ryots, protected the resident ryots in their acknowledged right to sub-let, and reduced the evil arising from this right to a minimum. He felt bound to vote for it. He did not understand that Mr. Field had put forward any scheme; but as he now understands the scheme now put forward, it is a proposal to benefit the ryot and save the middlemen from confiscation—a scheme where nobody loses and everybody gains—he does not understand how this can be done.

Twenty-third Meeting of the Rent Commission.

Tuesday, the 24th February 1880, 3 *p. m.*

PRESENT:

MESSRS. Field, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal and Peary Mohun Mookerjee.

Mr. Field's paper on the proposed special procedure for rent suits was discussed and settled.

It was agreed that the procedure of Act X, 1859, should be followed generally, and that any improvements suggested by the Civil Procedure Code should be incorporated by reference.

The Commission adjourned till the following Friday.

Twenty-fourth Meeting of the Rent Commission.

Friday, the 27th February 1880, 3 *p. m.*

PRESENT:

THE President; Messrs. Field, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal and Peary Mohun Mookerjee.

A discussion took place on Mr. Mackenzie's proposals of the preceding Friday, but nothing was definitely settled.

The Commission adjourned till the following Tuesday.

Twenty-fifth Meeting of the Rent Commission.

Tuesday, the 2nd March 1880, 3 *p. m.*

PRESENT:

THE President; Messrs. Field, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal and Peary Mohun Mookerjee.

After much discussion the following scheme was sketched out and reserved for future consideration:—

1. That holders of lands over 100 beeghas in extent (being occupancy ryots) be allowed to sub-let in the same manner as occupancy ryots holding less than 100 beeghas, and subject

to the same restrictions, their korfas being treated in the same way as the korfas of small holders.

2. But when an occupancy ryot holding over 100 beeghas can show that his tenure was originally of the nature of a jungleboorее tenure, *i. e.*, that he came on the land as a reclaiming capitalist he shall be exempt from these rules. His rent shall not in that case be more than 10 per cent. of the gross produce, and the rents of his under-tenants of all grades shall be regulated by the custom of the district, if any such custom can be clearly established, or shall be enhanced only in the same ratio as the rent of the relaiming tenant who holds direct from the proprietor.

3. That no sub-ryot of any grade shall be liable to pay more than the value of 30 per cent. of the gross produce.

4. That the maximum rent of the ordinary occupancy ryot be equal to 20 per cent. of the gross produce.

5. That the rent of the korfa tenant of an occupancy ryot be not more than half as much again as the occupancy rate, subject to the above limit of 30 per cent.

6. That the Collector shall determine the value of the gross produce of each of the classes of land within selected local areas, and declare those values, which will at once regulate the fixed maximum rents, and form the table of rates for those areas.

7. That a zemindar shall be at liberty to enhance any ryot's rent up to those rates, *subject to the other limitations laid down in the law*, unless the ryot can show that he is entitled to hold at a lower rate.

8. Existing rents not to be lowered in any case on account of the table of rates.

The Commission adjourned till the following Friday.

Twenty-sixth Meeting of the Rent Commission.

Friday, the 5th March 1880, 3 *p. m.*

PRESENT:

THE President; Messrs. Field, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Mohini Mohun Roy.

Mr. Field's sections relating to coparceners were discussed.

It was agreed by all, except Baboo Peary Mohun Mookerjee, that in the case of disagreement between coparceners as to the management of their estate, tenure, or under-tenure, the District Judge shall only interfere upon the application of the Collector, or of some person interested.

Baboo Peary Mohun Mookerjee contended that no manager should be appointed, except on the application of a coparcener or coparceners owing more than a 12-anna share in the property.

The following proposition was carried, all the members of the Commission voting for it, except Mr. Field —

That where there shall have been a general manager appointed by the Government for any district, the Government being hereby authorized to appoint the same, all estates, tenures and under-tenures shall be placed under his management.

It was agreed by all the members, except Mr. O'Kinealy and Baboo Brojendro Kumar Seal, that an arrear of rent shall bear interest at the rate of 12 per centum per annum.

It was pointed out by Baboo Brojendro Kumar Seal that by the use of the words "*shall be liable* to interest at 12 per centum" in section 21 of Act VII (B. C.) of 1869, the Legislature evidently intended to give a discretionary power to the courts in the matter of awarding interest (Marshall's Reports 278, 1, W. R. 154, 6 B. L. R. 120), and he contended that the law on the subject ought not to be changed.

It was proposed that a tenant may deposit rent payable by him in the collectorate when he entertains a *bonâ fide* doubt as to who is entitled to receive the same, even though no dispute exist as to the right to receive it.

This was carried,—Mr. Field, Baboos Peary Mohun Mookerjee and Mohini Mohun Roy objecting to the omission of any reference to a dispute existing.

The Commission adjourned till the following Tuesday.

Twenty-seventh Meeting of the Rent Commission.

Tuesday, the 9th March 1880, 3 *p. m.*

PRESENT:

THE President; Messrs. Field, O'Kinealy and Mackenzie, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Mohini Mohun Roy.

It was agreed that every tenure, under-tenure and occupancy holding should be deemed to be hypothecated for its own rent, and that such rent should be a first charge thereon; but that all words should be omitted providing that, in the event of such tenure, &c., being sold in execution of a decree obtained by a person other than the landlord, such landlord should be entitled to priority of payment before other creditors in respect of any rent that might be due to him.

Mr. Field's section on the registration of transfers and limitation were discussed and settled.

The Commission adjourned till the following Friday, but was subsequently further adjourned till Tuesday, the 16th March.

Twenty-eighth Meeting of the Rent Commission.

Tuesday, the 16th March 1880, 3 *p. m.*

PRESENT:

THE President; Messrs. Field, Mackenzie and O'Kinealy, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Kohini Mohun Roy.

The following proposition was carried unanimously:—

That holders of land over 100 beeghas in extent, (being occupancy ryots) be allowed to sub-let in the same manner as occupancy ryots holding less than 100 beeghas and subject to the same restrictions, their korfas being treated in the same way as the korfas of small holders.

The following proposition was carried, Baboos Peary Mohun Mookerjee and Mohini Mohun Roy dissenting:—

That when an occupancy ryot holding over 100 beeghas can show that his tenure was originally of the nature of a junglebooree tenure, that is, that he came on the land as a reclaiming capitalist, he shall be exempt from the rules now laid down. His rent shall not in that case and in the absence of contract be more than ten per cent. of the gross produce, and the rents of his under-tenants of all grades shall be regulated by the custom of the district, if any such custom can be clearly established, or shall be enhanced only in the same ratio as the rent of the reclaiming tenant who hold direct from the proprietor.

The following propositions were carried, Mr. O'Kinealy and Baboo Peary Mohun Mookerjee dissenting:—

That when a ryot or sub-ryot pays rent in kind, the maximum rent recoverable shall be one-half of the gross produce; and that when a ryot pays a money rent, the maximum rent recoverable from the ryot shall be 40 per cent. of the value of the produce.

The following proposition was carried unanimously:—

That the maximum rent of the ordinary occupancy ryots be equal to 25 per cent. of the gross produce.

It was understood that all the above propositions might be subsequently, if necessary, modified.

The Commission adjourned till Friday, the 19th March 1880.

Twenty-ninth Meeting of the Rent Commission.

Friday, the 19th March 1880, 3 *p. m.*

PRESENT:

THE President; Messrs. Field, Mackenzie and O'Kinealy, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Mohini Mohun Roy.

The consideration of the scheme sketched out at the meeting of the 2nd March last was resumed.

It was agreed to leave to the revenue authorities the determination of the gross value of produce, proceedings as far as possible on a reasonable average of years and upon prices in the locality.

It was suggested that the rent of special crops be regulated by a maximum percentage of increase, but this point was left for final settlement hereafter.

Proposition No. 7 of the 2nd March was carried, the limitations therein referred to being (1) new rent not to be more than double the former rent, and (2) 'that increase may be progressive, and the word "entitled" being deemed to mean "entitled by contract or custom."

It was also agreed that existing rents should not be lowered in any case on account of the table of rates.

The report of the Behar Rent Committee was then taken up and its recommendations considered.

The proposal to enforce the filing of zemindari accounts by dismissing rent suits unless the plaintiff file with the plaint a definite receipt of his yearly accounts, or otherwise satisfactorily prove that his accounts have been duly filed in the rent-roll office was negatived.

The proposal to prevent loose sheets of papers, such as jammabundies, jammawasilbakisi, &c., being considered "books kept in the regular course of business" and so being admissible as evidence was also negatived.

It was resolved not to make the interchange of pottahs and kabuliyats compulsory.

Mr. Browne's recommendation that a court which decrees rights of occupancy shall compel interchange of pottahs and kabuliyats, specifying the boundaries of the fields in which such rights are decreed, was considered to be sufficienly met by what the Commission have already settled regarding the particulars to be given in plaints and decrees.

The proposal as to the use of counterfoil receipts is in accordance with the resolution of the Commission for Bengal, but it was not thought necessary to give a form for receipts.

"Head IV" of the Behar Committee's report on "the cheapening of registration" was held not to come within the purview of the Rent Commission.

The Commission adjourned till the following Tuesday.

Thirtieth Meeting of the Rent Commission.

Tuesday, the 23rd March 1880, 3 p. m.

PRESENT:

THE President; Messrs. Field, Mackenzie and O'Kinealy, Baboos Brojendro Kumar Seal and Peary Mohun Mookerjee.

The report of the Behar Committee was taken up and the remaining portion of it considered.

With respect to "Head V," page 6, it was resolved that all ryots in Behar shall be deemed to have a right of occupancy in any land, other than *zerat* land, of which they are in possession on the [*date to be fixed hereafter*], if they have held such land for the three years next preceding such date, and if they have for twelve years next preceding such date held as ryots *any* land in the estate of which such land forms a part, or in any estate which with such former estate at any time formed a single estate.

It was further resolved that this rule shall apply in future.

It was agreed to accept the definition of *zerat* land given at page 7 of the Behar report, *i. e.*, land continuously cultivated by the proprietor or co-sharer for twelve years with his own stock or by his servants, or by hired labour at his expense.

It was agreed that when a ryot exchanges his land or any part of it, he shall have the same right in the land which he gets in exchange as he had in that which he gave in exchange.

As to the ejectment of non-occupancy ryots (p. 7, para. 16), it was resolved that this subject must be treated for Behar as for Bengal. A similar resolution was arrived at on the following points, *viz.*, compensation for improvements (p. 7, para. 17); transferability of occupancy rights and presumptions in favour of ryots (Head VI, p. 8); distraint (Head VII, p. 8); enhancement (Head VIII, p. 9); demand of illegal cesses (Head IX, p. 9); summary procedure (Head XI, p. 10); settlement by Collectors in disputed cases (Head XII, p. 11); instalments (clause 1, para. 25, p. 12); measurements (clause 2, para. 25, p. 12); specification of boundaries, &c., in plaints (clause 3, para. 25, p. 12); and deposits of rent (clause 4, para. 25, p. 12).

On the subject of payment of rent in kind (Head X, p. 10) it was resolved to adopt the recommendations contained in clauses (*a*) and (*b*) of para. 23. The recommendation contained in clause (*c*) of the same paragraph was rejected. The recommendation contained in clause (*d*) was adopted with the following additions: "less a fair deduction in consideration of the ryot taking the whole risk, and allowing for land now usually left uncultivated." For the commutation of rents in kind into money rents, it was resolved that the same machinery should be used as for making a table of rates. Ths recommendation contained in clause (*e*) of the same paragraph was adopted with the following modifications: strike out the last five words; insert "not more than" between "to" and "half," and make the rule apply to all cases, whether a written agreement exists or not

The propositions contained in clauses (*a*), (*b*) and (*c*) of para. 29 (p. 12) were rejected.

It was resolved to make provision for the away-going crop in the case of rejected tenants in Bengal and Behar.

The Commission adjourned till the following Tuesday.

Thirty-first Meeting of the Rent Commission.

Tuesday, the 30th March 1880, 3 p. m.

PRESENT:

THE President; Messrs. Field, Mackenzie and O'Kinealy, and Baboos Brojendro Kumar Seal and Peary Mohun Mookerjee.

The subject of enhancement was discussed.

The Commission adjourned till the following Friday.

Thirty-second Meeting of the Rent Commission.

Friday, the 2nd April 1880, 3 p. m.

PRESENT:

THE President; Messrs. Field, Mackenzie and O'Kinealy, and Baboos Brojendro Kumar Seal, Peary Mohun Mookerjee and Mohini Mohun Roy.

The subject of enhancement was again taken up and discussed.

The Commission adjourned till the following Tuesday.

Thirty-third Meeting of the Rent Commission.

Tuesday, the 6th April 1880, 3 *p. m.*

PRESENT:

MESSRS. Field, Mackenzie and O'Kinealy, and Baboo Peary Mohun Mookerjee.

The Digest was considered, and it was resolved—

(1) to omit the following Articles and the matter of them, *viz.*, 3, 4, 5, 7, 8, 9 in part; 11, 14, 15, 17, 18, 30, 31, 34, 41, 42, 48, 54, 56, 67, 70, 71, 72, 73, and 74:

(2) to retain the following Articles with certain amendments, *viz.*, 6, 9 in part; 12, 24, 32, 33, 39, 47, 57, 58, 59, 62 63, 64, 65, 66, 68, 69 and 98.

The Commission adjourned till the following Friday.

Thirty-fourth Meeting of the Rent Commission.

Friday, the 9th April 1880, 3 *p. m.*

PRESENT:

THE President; Messrs. Field and Mackenzie, Baboos Peary Mohun Mookerjee and Mohini Mohun Roy.

Mr. Field's draft of procedure, segment II, was taken up and considered, and sections 136 to 149 were settled.

Baboo Mohini Mohun Roy proposed that this procedure for sale without decree should be extended to give all proprietors and tenure-holders the right to sell all tenures and under-tenures, respectively. This proposal was not approved. His proposal that the mofussil notice of sale should be served through the court was also negatived.

The Commission adjourned till the following Friday.

Thirty-fifth Meeting of the Rent Commission.

Friday, the 16th April 1880, 3 *p. m.*

PRESENT:

THE President; Messrs. Field and O'Kinealy, and Baboo Peary Mohun Mookerjee.

Mr. Field's note on enhancement was discussed, but not definitively. Articles 13, 75, and 83 of the Digest were settled; and sections 150 to 164 of the Procedure draft were discussed and settled.

The Commission adjourned till the following Tuesday.

Thirty-sixth Meeting of the Rent Commission.

Friday, the 23rd April 1880, 11 *a. m.*

PRESENT:

THE President; Messrs. Field and O'Kinealy, and Baboo Peary Mohun Mookerjee.

Mr. Field's draft of procedure (segment III) was taken up and discussed, and sections 165 to 224 were settled.

It was agreed that in section 175 (arrest of defendant before judgment in certain cases) the words "such defendant being resident within the district in which the suit is instituted" should be inserted.

Mr. O'Kinealy was in favour of substituting the sections of the Civil Procedure Code regarding arrest before judgment for the proposed sections relating to arrest, as this was the law in force since 1869; but a majority preferred Mr. Field's draft with a light modification.

It was agreed that affidavits under section 137 of *The Code of Civil Procedure* might be made in rent cases by the plaintiff, his pleader, or any person acquainted with the facts.

Mr. O'Kinealy thought section 180 (making applicable the provisions of *The Civil Procedure Code* relating to attachment before judgment) unnecessary, the land being already hypothecated for the rent by section 54; but Mr. Field pointed out that there might be suits for the rent of land not so hypothecated.

Mr. O'Kinealy would have the provisions of section 206 (relating to the sale of tenures, &c., subject to their incumbrances) retro-active as regards previous incumbrances, whether registered or not, but the majority of the Commission agreed to make it retro-active as regards registered incumbrances only if a copy be served within six months after the Act comes into operation.

The Commission adjourned till the following Tuesday.

Thirty-seventh Meeting of the Rent Commission.

Thuesday, the 27th April 1880, 11 *a. m.*

PRESENT:

THE President; Messrs. Field and O'Kinealy, and Baboo Peary Mohun Mookerjee.

Mr. Field's draft procedure (segment IV) was taken up and considered.

It was agreed to omit the proviso at the end of section 03 to the effect that, in the case of a non-transferable holding, the landlord may at his option accept a verbal relinquishment.

Mr. Mackenzie wrote that he would prohibit the landlord absolutely from taking anything but rent from his tenants, and Baboo Peary Mohun Mookerjee opposed the permitting revenue authorities to have any voice in determining the validity or otherwise of ancient customs by virtue of which landlords might claim other payments.

The following points were determined:—

(1.) A section to be inserted declaring the right of a ryot to cut trees planted by himself or his predecessors.

(2.) The Bill not to apply to Orissa in the first instance, but to empower the Lieutenant-Governor so to extend it if necessary.

(3.) All notices to be served in accordance with the provisions of the Civil Procedure Code in section 174 of the draft.

(4.) The sale of an occupancy holding for arrears of rent to avoid all sub-leases, Mr. O'Kinealy and Baboo Peary Mohun Mookerjee dissenting.

The Commission adjourned *sine die.*

Thirty-eighth Meeting of the Rent Commission.

Tuesday, the 25th May 1880, 11 *a. m.*

PRESENT:

THE President; Messrs. Field and O'Kinealy, and Baboo Peary Mohun Mookerjee.

The paper of propositions submitted by the President and Mr. Field to the other members of the Commission was taken up and considered, together with Mr. Mackenzie's remarks on the same.

The first question was as to what persons should be deemed tenure-holders within the meaning of sections 8, 9 and 10 of the Bill. The President and Mr. Field had proposed that—

(1) "every person let into possession of a single lot, including more than 50 standard bighas of land by a proprietor [or by Government in a khas mehal], before or after the commencement of this Act, should be deemed such a tenure-holder."

Mr. Mackenzie wrote that he was doubtful as to the propriety of an area-test of status, but that if such was to be an absolute test, the figure of 50 bighas seemed to him far too low. He proposed that where a person held lands as to part of which he might be considered a tenure-holder, and as to part a ryot, it should be left to the courts to settle his status on a consideration of the general circumstances and character of his tenure *as a whole;* making it a *presumption* that if the area of the whole was more than 100 bighas, the holder was a tenure-holder, and if it was under that amount, that he was a ryot.

The President said that the chief point was to prevent a person possessing more than 100 bighas being considered a ryot.

Mr. Field was of opinion that a tenant holding less than 100 bighas should be allowed to contract as he chose, but that if he held more than 100 bighas, he should be considered a tenure-holder.

Mr. O'Kinealy would not allow such contracts.

Eventually it was agreed that the President's and Mr. Field's proposition as stated above should stand, with the substitution of "100" for "50,"—any contract to the countrary notwithstanding—in respect of lands let either before or after the commencement of the Act.

It was also agreed that persons let into possession of less than 100 bighas might be ryots or tenure-holders as they chose to arrange by contract.

The next proposition agreed to was that—

(2) "every person let into possession of a single lot, including more than 100 standard bighas of land by a tenure-holder or under-tenure-holder, before or after the commencement of this Act, should be deemed to be an under-tenure-holder within the meaning of sections 8, 9 and 10 of the Bill."

The third proposition carried was as follows:—

(3) "no such tenure-holder as is mentioned in proposition (1), no such under-tenure-holder as is mentioned in proposition (2), and no *mukarraridar* or *istemrardar* can acquire a right of occupancy in land which is part of his tenure or under-tenure."

The fourth proposition considered was that—

(4) "any such tenure-holder or under-tenure-holder shall be entitled to more favourable rates than those mentioned in section 9 if not less than three-fourths of the land was unreclaimed at the time of the original letting into possession, and such letting into possession was for the purpose of reclamation."

Considerable discussion arose as to the words "not less than three-fourths."

Mr. O'Kinealy was against any exact proportion being stated, and would compensate tenant according to the amount expended. If a tenant who reclaimed three-fourths entitled to more favourable rates, he did not see on what principle a tenant reclaiming than three-fourths could be refused all compensation. The present section would not the case of a tenant spending large sums in keeping up embankments. Indeed as it stood the tenant might claim more favourable rates, although he had never spent a rupee on reclamation.

Mr. Field proposed to substitute the words "more than one-half," and this was eventually agreed to.

(5) "section 9, as it now stands, takes account only of the gross rents payable to the tenure-holder or under-tenure-holder; but account should also be taken of land occupied and cultivated by him, or granted *rent-free* by him. A reasonable rent should be estimated for all such land taken into account."

This was agreed to.

(6) "having regard to the actual rents now paid, we think that 10 per cent. of the net collections is not enough for the profit of the tenure-holder or under-tenure-holder. We have carefully examined this point, and we think that the court should be allowed to give what is fair and equitable: provided that (*a*) in the case of a reclaiming lease-holder (*jangalburi talukdar*) not less than (say) twenty per cent. of the net collections shall be given, and (*b*) in the case of the other tenure-holders and under-tenure-holders not more than (say) thirty per cent. shall be given."

This was agreed to, Baboo Peary Mohun Mookerjee objecting to thirty per cent. as an encroachment on the rights of zemindars.

(7) "the following persons shall be deemed to be ryots capable of acquiring a right of occupancy:—

"(*a*) every person holding immediately under any such tenure-holder as is mentioned in proposition 1, or under any such under-tenure-holder as is mentioned in proposition 2, and who is not himself an under-tenure-holder, if before such person was let into possession no other person has acquired a right of occupancy in the same land under the provisions of this Act, or Act X of 1859, or Act VIII (B. C.) of 1869:

"(*b*) every ryot holding immediately under a *mukarraridar* or *istemrardar*."

These clauses were agreed to, Baboo Peary Mohun Mookerjee suggesting that the last proposition should be modified, as he did not think a mukarraridar who let his land should lose his right of occupancy.

(8) "one person only can have a right of occupancy in land at the same time."

This was negatived: and it was resolved to retain the present law, under which a ryot, holding land under a right-of-occupancy ryot, can acquire a right of occupancy in such land, if let otherwise than on a lease for a term or year by year.

(9) "as a necessary consequence of the previous propositions, a right of occupancy may be acquired by 'holding' merely without *cultivating*, and the present draft Bill must be amended accordingly."

This was agreed to.

(10) "the Act to be silent about *sub-letting*, neither prohibiting nor authoritatively recognizing the practice by ryots."

Mr. Field undertook to add an illustration to section 4 of the Bill, showing that the customary right of a right to sub-let is not intended to be affected by the provisions of the new Act.

The following proposition was carried, Baboo Peary Mohun Mookerjee dissenting:—

(11) "the operation of the enhancement provisions in the present draft Bill shall be subject to the following rules:—

(*a*) the enhanced money rent of an occupancy ryot shall not exceed 25 per cent. of the average annual value of the gross produce:

(*b*) such annual value shall be calculated upon staple crops only. Board of Revenue to declare staples for areas, and to make rules for calculation."

Mr. O'Kinealy proposed that the maximum rent of a non-occupancy ryot should be fixed.

Ayes.	*Noes.*
Mr. O'Kinealy.	Mr. Field.
„ Mackenzie.	Baboo Peary Mohun Mookerjee.
	The President.

The proposition was therefore negatived.

(12) the rent in kind of an occupancy ryot who receives no assistance in the way of seed, labour, &c., from his landlord, shall not exceed 50 per cent. of the gross produce in the case of staple crops. In the case of special crops, the parties may make a special contract. In the absence of such special contract, the courts shall not give more than 25 per cent. of the average annual value of the gross produce of staple crops."

This proposition was agreed to, Mr. O'Kinealy preferring that the rent in question should not exceed 40 per cent., and Mr. Mackenzie that the courts should give a percentage of increase in the former rent in the latter case.

The President and Baboo Peary Mohun Mookerjee thought this rule should not disturb existing rents, but the other members of the Commission were in favour of it operating on existing rents.

(3) "in order to facilitate the enhancement and abatement of rents on the ground of rise or fall of *prices* it is proposed—

"that the Collector of every district shall prepare annually and publish in the Gazette average price lists of the staple crops for suitable arreas."

The areas, it was suggested, might be settled by the Board of Revenue upon the recommendation of the Collector. The prices of certain fixed marts should be taken, the same marts being always adhered to. The price of production in the field where it is grown varies according to the distance of the usual market, and the necessary cost of carriage thereto. The price in different markets varies according to their proximity to larger markets or the port of export and the facilities for carriage thereto. By taking always the prices of the same markets, the normal variation as affected by external and general, as distinguished from the local and particular, causes, is more likely to be obtained.

(14) it was also proposed that "the Gazette copy of these price lists should be made relevant admissible as evidence—in cases between landlords and tenants concerned with the enhancement or settlement of rents:

"that to secure uniformity, the Board should be empowered to make rules for the preparation of these price lists, and should have a power of revision."

These propositions were agreed to.

(15) "increase of the productive powers of the land may be brought about (1) by the agency or at the expense of the ryot; or (2) by the agency or at the expense of the landlord; or (3) without the agency or expense of either, by external causes. In the *first* case the ryot is not liable to enhancement; in the *second* and *third* cases he is liable, but the present law gives the whole increment to the landlord. It would be equitable to give the whole increment to the landlord in case (2), and in case (3) to divide the increment, share and share alike between the landlord and tenant."

Messrs. O'Kinealy and Mackenzie would give the ryot two-thirds in case (3).

A majority, however, decided that the landlord and tenant should each have one-half.

The last proposition agreed to was—

(16) "in the case of an increment due to rise of prices only, the present law gives all the increase to the landlord. It is proposed to divide it between the landlord and tenant, giving a moiety to each."

The draft Bill, as amended up to the 8th May 1880, was then considered, section by section. The first 25 sections were settled.

Mr. O'Kinealy objected to section 17, *viz.*,—

"(*e*) no ryot can be ejected from land in which he has a right of occupancy whether for non-payment of rent or other cause not being a breach of a stipulation in respect of which such ryot and his landlord have contracted in writing that the ryot shall be liable to ejectment for a breach thereof."

A majority of the members of the Commission, however, resolved that it should stand.

The Commission adjourned till the following day.

Thirty-ninth Meeting of the Rent Commission.

Wednesday, the 26th May 1880, 11 *a. m.*

PRESENT:

THE President; Messrs. Field and O'Kinealy, and Baboo Peary Mohun Mookerjee.

Sections 26 to 45, inclusive, of the draft Bill, as amended up to 8th May 1880, were considered and settled.

Mr. O'Kinealy enquired if the meaning of section 32 was that every ryot who had held land for less than three years might be ejected, whether it was customary for him to be ejected or not, as, if so, he entirely objected to this section.

Mr. Field replied that such provision was intended to be subject to any custom to the contrary which might be proved under section 4 of the Bill. In order to prevent possible misapprehension, he, in deference to Mr. O'Kinealy's view, undertook to introduce into the section the words "subject to the other provisions of this Act."

Mr. O'Kinealy wished it to be recorded that he objected to the whole of Chapter VI, dealing with "the use of land for building purposes." A majority decided that it should stand.

In section 42, which permits a landlord to enhence an occupancy tenant under ce[illegible] circumstances so that the rent may be equal to five per cent. of the market-value of the [illegible] Baboo Peary Mohun thought this percentage too low, and desired that the maximum [illegible] at be twenty per cent.

This proposal was not agreed to by the other members of the Commission.

Mr. O'Kinealy thought Chapter VII "of merger" unnecessary, and likely to cause difficulties. The other members were in favour of its retention.

The Commission adjourned till the following Friday.

Fortieth Meeting of the Rent Commission.

Friday, the 28*th May* 1880, 11 *a. m.*

PRESENT :

THE President ; Messrs. Field and O'Kinealy, and Baboo Peary Mohun Mookerjee.

The draft Bill was again taken up and considered, and Chapters VIII, IX, X, XI, XII XIII and XIV (sections 46 to 92 inclusive and section 94), were settled.

The Commission adjourned till the following Monday.

Forty-first Meeting of the Rent Commission.

Monday, the 31*st May* 1880, 11 *a. m.*

PRESENT :

THE President ; Messrs. Field and O'Kinealy, and Baboos Peary Mohun Mookerjee and Mohini Mohun Roy.

The draft Bill was further considered, and the whole of Part II, except Chapter XV (*i. e.*, sections 133 to 225 inclusive) was settled.

In Chapter XVI it was agreed that the zemindar should be bound to receive the arrears of rent of a tenure up to sunset on the day preceding the day of sale of such tenure for its own arrears, subject, however, to the rules made by the proper authorities for the receipt of money. It was further agreed that no tender of money after sunset on such day should stop the sale.

Mr. Field and Baboo Mohini Mohun Roy were in favour of allowing tenure-holders up to noon of the day of sale to tender arrears, but the majority of the Commission voted against this proposal.

Mr. O'Kinealy disapproved of the definition of "incumbrances" in section 206, on the ground that it did not include incumbrances made by unregistered as well as registered instruments before the commencement of the Act. The definition as drafted was retained in accordance with the opinion of the majority.

Baboos Peary Mohun Mookerjee and Mohini Mohun Roy thought that a purchaser should be allowed twelve years to avoid and annul incumbrances on tenures sold for arrears of Government revenue. After the discussion it was settled in accordance with the opinion of a majority that the limitation should be three years from the date of such incumbrances coming to the purchaser's knowledge.

Mr. O'Kinealy wished to record his vote against arrears of rent carrying interest at the rate of twelve per centum per annum.

The Commission adjourned till the following Wednesday.

Forty-second Meeting of the Rent Commission.

Wednesday, the 2*nd June* 1880, 11 *a. m.*

PRESENT :

THE President ; Messrs. Field, O'Kinealy, and Baboo Peary Mohun Mookerjee.

Baboo Brojendro Kumar Seal's notes on Chapter XVIII (Procedure) of the Bill were discussed.

The Baboo proposed that any suit might be tried according to the provisions of the Civil Procedure Code upon consent of parties.

A majority of the Commission, however, disapproved the proposal.

In section 205 the Baboo thought that any body, without restriction, should be allowed to pay into court the amount of decree and costs awarded, but a majority of the Commission preferred the section as it was drafted.

In section 206 (explanation), the Baboo and Mr. O'Kinealy thought, against the opinion of a majority of the Commission, that when the tenure is mortgagable without the zemindar's consent, there was no reason why any condition should be specially made, as the zemindar would be competent to sell free from incumbrances.

Section 210, *first proviso.*—The Baboo and Mr. O'Kinealy would leave out the word "resident," but a majority of the Commission were in favour of retaining it.

Section 211, (3).—The Baboo objected to not more than six months' rent after final decree being given. He thought that complicated questions might arise, which could not well be settled in the execution department, and that the landlord ought to be left to a regular suit. Mr. O'Kinealy wished to record his objection to this section on account of 12 per centum interest being made compulsory.

A majority of the Commission were in favour of the section standing as drafted.

A discussion afterwards took place as to the application of the table of rates to the third and fourth grounds of enhancement.

The Commission adjourned till the following day.

Forty-third Meeting of the Rent Commission.

Thrusday, the 3rd *June* 1880, 11 A. M.

PRESENT:

THE President; Messrs. Field and O'Kinealy, and Baboos Peary Mohun Mookerjee and Mohini Mohun Roy.

Mr. Field's draft report on the proceedings of the Commission was taken up and a portion of it settled.

The Commission adjourned till the following day.

Forty-fourth meeting of the Rent Commission.

Friday, the 4*th June* 1880, 11 A. M.

PRESENT:

THE President; Messrs. Field and O'Kinealy, and Baboo Peary Mohun Mookerjee.

Mr. Field's draft report was again taken up and finally settled.

The Commission adjourned *sine die.*

NOTES AND PAPERS CONSIDERED BY THE COMMISSION AND REFERRED TO IN THE REPORT AND PROCEEDINGS.

From—F. M. HALLIDAY, Esq., Commissioner of Patna, dated 8th March 1879, with report, &c., of the Behar Rent Committee.

WITH reference to your letter No. 1122, dated 7th September 1878, I have the honour to submit herewith the report of the committee appointed to consider the question of the rent-law for Behar, together with minutes of the committee's proceedings. The report has been signed by the majority of the committee, but appended are also copies of the following:—

I.—Letter from Mr. Browne, the Judge of Patna. Mr. Browne has assented to the report, but desires that the suggestions contained in his letter may be laid before Government.

II.—Letter from Mr. T. M. Gibbon, containing his remarks dissenting from the resolutions of the committee.

III.—Second letter from Mr. T. M. Gibbon on the subject of the Behar Landholders' Association memorial recently submitted to Government.

IV.—Letter from Baboo Hurbuns Sahai, a member of the committee.

V.—Letter from Baboo Joy Perkash Lall, a member of the committee.

2. From the notes of the proceedings it will be seen that, in anticipation of the meeting, Messrs. Worseley and Finucane had each drafted a Bill for consideration of the committee; copies of these I beg to enclose for the information of Government, as there is much in both Bills worthy of note, though the committee, as will appear, for reasons given in the minutes of proceedings, considered it advisable eventually not to adopt either the one Bill or the other as the basis of discussion at the meetings held at Sonepore.

3. Owing to the absence of Mr. Hodgkinson in Burmah, his signature to the report has not been obtained.

REPORT OF THE BEHAR RENT COMMITTEE.

WE, the committee appointed to consider the subject of the proposed Rent-Law for Behar, beg to submit the following report:—

Summary of points at which amendments of rent-law proposed.

1. The objects which it is sought to effect are the enactment of an effective and simple procedure to enable the ryot—

(*a*) to maintain his rights of occupancy when acquired;

(*b*) to hold his land subject to fixed conditions of tenure;

(*c*) to be certified exactly of the amount which he will have to pay annually;
(*d*) to resist illegal distraint;
(*e*) to have at hand a trustworthy record of demands and payments.

All the suggestions contained in the papers which have been referred for our consideration aim at improving the existing machinery for attaining these ends. The points at which it is proposed to strengthen and improve this machinery will be successively indicated under the following heads:—

(1) To improve the system of zemindari accounts in connection with the obligations imposed on putwarees.
(2) To encourage or render compulsory the interchange of pottahs and kabooliyats.
(3) To insist on the use of counterfoil receipts.
(4) To cheapen registration.
(5) To discourage disintegration of old and new holdings, whether by amalgamation or otherwise.
(6) To allow occupancy rights to be transferable by sale, and to create certain presumptions of law in favour of the ryot.

And for the other purposes in view, it is proposed—

(7) To simplify and amend the law of distraint, and to make illegal distraint, or restraint of crops, specially punishable.
(8) To limit the right to enhance, and make illegal enhancement punishable.
(9) To make the demand of illegal cesses punishable.
(10) To recognise and provide by law for the system of payment in kind which obtains largely in the province.

And to those may be added—

(11) The provision of a summary procedure, as in the Bengal Bill, for the recovery of undisputed arrears of rent.
(12) The empowering of Collectors to effect a settlement in certain disputed cases.

No novel rights created or obligations imposed. Amendments chiefly declarations of existing law.

2. We propose to enumerate the amendments and alterations in the present law which we think best calculated to effect the objects stated in the preceding paragraph. It will, we trust, be found that the changes which we propose confer no novel rights upon the ryots; that they impose no novel obligations on zemindars; that they for the most part merely declare and define the existing law, and that they are strictly consistent with the fullest recognition of the rights which were conferred by the Permanent Settlement on all parties concerned.

Head I.—Improvement in the system of Zemindari accounts.

3. Under this head we propose—

Filing of accounts in Collector's offices.

First, to make it obligatory on landholders to file annually in the Collector's or other public office such accounts as the local Government may direct. These accounts should contain not less than the following particulars:—

(1) The serial number of each ryot.
(2) The name of each ryot.
(3) The area of land held by each ryot, and of the portions thereof of which rent is payable in cash and in kind.
(4) The details of each separate annual demand on each ryot, and the total thereof.

It is held by some of us that ryots, by taking copies of these accounts, can be certified of the areas of their holdings, the rates claimed, and the annual demand upon them; others of us are of opinion that any such extracts would, in practice, have to be repudiated by the ryot. For reasons which we give further on in this report, we do not see our way to enforce by any new legislation the interchange of any specific form of pottahs and kabooliyats. We propose therefore to adhere to the existing general declaration that the terms on which land is held ought to be reduced to writing. But we consider it impossible to forecast any form of lease or counter-lease which shall sufficiently meet the requirements of every case. We trust that extracts from the accounts which we propose to have filed will practically serve the purpose of pottahs, without compelling the parties to have recourse to that litigation to which the compulsory interchange of leases and counterparts would give rise. Extracts from the accounts thus filed will also help the ryot to prove his occupancy rights and to maintain them when acquired. We propose that the filing of these accounts should be enforced by dismissing rent-suits, unless the plaintiff file with the plaint a deposit receipt for his yearly accounts, or unless he otherwise prove to the satisfaction of the court that such accounts have been duly filed in the rent-roll office.

Exclusion from evidence of loose sheets of paper.

Secondly.—Under this head we also propose to exclude from evidence loose sheets of paper produced from the putwarees' or zemindars' sherista, such as jummabundees, jummawasil bakees, and other papers of that kind. Under the present law such documents should not, we think, be received in evidence. Being written in loose sheets, any number of them may be fabricated to suit the exigencies of any particular case; and as they are written by the putwaree and produced from his sherista, it will be manifest that they are generally fabricated to suit the party who can offer the putwaree the highest bribe. The result is that the too frequent course of a rent-suit in Behar resolves itself into a prolonged, and often irrelevant, wrangling over a chaotic mass of jummabundee papers. The moonsif endeavours to grope his way as to how far, if at all, this or that set of jummabundee papers is not an utter fabrication by some putwaree not present in court to be examined touching those papers—a question which the moonsif need never have allowed to be raised if he had but excluded these papers, as being, under the circumstances, not admissible for the court to refer to, much less to explore. We are unable to see how these loose sheets of paper can be admitted in evidence at all, unless it be held that they are "books kept in the regular course of business."—(Evidence Act, section 34.) Such a theory is a manifest absurdity to anybody who has had practical knowledge of the loose scraps of paper now filed in the courts as putwarees' accounts. We therefore propose to draw the attention of the civil courts to the inadmissibility in evidence of these loose sheets of paper, by distinctly declaring that they are not books kept in the regular course of business within the meaning of section 34 of the Evidence Act. Of course such documents, though not books, are yet admissible under section 159 of the Evidence Act, in order to refresh the memory of the particular putwaree who wrote them. In practice, we believe that they are not received under this section. It frequently happens, owing to the power hitherto exercised by ticcadars and zemindars in Behar of dismissing and appointing putwarees at their pleasure, that papers written by one putwaree are produced by his successor, who has no personal knowledge of their contents, and are received as being evidence *per se*. Under any circumstances it is objectionable that putwarees' papers, as now compiled, should continue to be admitted on a record on the same footing as a Government map.

4. *Putwarees.*—We do not deem it desirable to incorporate the law relating to putwarees with the rent-law. A separate draft Bill regarding putwarees has been submitted for our consideration. That Bill involves the imposition of a "putwarees' cess," to which a majority of us are, under present circumstances, opposed. We have therefore no suggestions to offer with regard to putwarees. We are, however, of opinion that the putwaree should be made (*first*) either a *bonâ fide* public servant paid by the State—a village record-keeper and nothing more; or (*secondly*) that he should be made entirely a zemindari servant, liable to dismissal at the pleasure of his master, the landholder. The present system, under which the putwaree is nominally a public servant, but is in reality the zemindar's paid servant, we are unanimous in condemning.

Head II.—Compulsory interchange of Pottahs and Kabooliyats.

Compulsory interchange of leases and counterparts considered.

5. The next point referred to us for consideration is the encouragement, or the rendering compulsory, of the interchange of pottahs and kabooliyats. This is a subject which in our opinion is beset with considerable difficulty. We are aware that it is a condition of agricultural prosperity that the terms on which cultivators

hold their lands should be defined and stable, and not arbitrary and precarious. The legislative enactments of our Government have, from the earliest period of our rule, over and over insisted in emphatic terms that agriculture—the great resource of this country—should be carried on with reasonable certainty, and that the contract between the rent-receiver and rent-payers shall be reduced to writing. On this subject we have caused a *précis* to be drawn up, tracing the rise and progress of formal lease deeds. It will be found in the appendix to this report.

6. Taking up this subject at 1859 we have to observe that Act X of 1859 and Act VIII of 1869 (section 2) declare that every ryot is *entitled* to receive a pottah from the person to whom the rent of the land cultivated by him is payable. The tender of such a pottah entitles the rent-receiver to a kabooliyat in conformity with the terms of the pottah.

It appears that while under the old regulations landholders were *bound* to tender pottahs in prescribed forms, failing in which they were liable to be nonsuited with costs, more recent laws and regulations leave it to some extent optional with them to tender pottahs or not as they think fit, and merely declare that the ryots are entitled to pottahs. These the ryots can now obtain by regular suit, but only with an amount of delay and expense which has practically rendered the privilege a nullity.

Notwithstanding these repeated and peremptory injunctions, pottahs not granted.

7. We believe we may safely say that, notwithstanding the repeated and peremptory injunctions and declarations of the Legislature in this matter, not one-quarter per cent. of Behar ryots hold pottahs; that in fewer cases still have the abwabs been consolidated with the *assal* rent, and have the ryots been certified of the specific amount which they have to pay from year to year.

Ryots' reluctance to accept pottahs.

In the *précis* appended to this report we have quoted Sir John Shore's remarks explanatory of the zemindar's failure to give, and of the ryot's reluctance to accept, leases. The principal difficulties which have always obstructed the desirable practice of interchanging leases and counterpart-leases have been described by the author of "Land Tenure, by a Civilian" [1832], in terms which still serve to describe the existing state of things in Behar.

"It had been, in the first instance, declared that regulations (*vide* I, 1793, section 8 ; XXVII, 1795, section 5 ; XXV, 1803, section 35) for the protection and welfare of the ryots and other cultivators would be enacted, but none have ever been effectually passed restoring them to any of their rights. Even the single stipulation (VIII, 1793, clause 2, section 60 ; LI, 1795, section 10) most in their favour, which was intended to prevent the zemindars from raising the rents of *khudkash* ryots, was so worded that it gave every zemindar the means of enhancing his demands at pleasure ; since, to entitle the ryot to the benefits of the provision set forth in the clause in question, it was necessary, in the first place, that he should have accepted a lease or pottah, and as in so doing he would have acknowledged a feudal over-lord, in the person of the zemindar, he was naturally averse to become a party to the annihilation of his rights.

"*2nd.*—In the pottah prescribed by the Code the abwab or illegal cesses were consolidated with the *assal* or authorized and prescriptive rate. The ryots did not acknowledge the existence of a right to levy anything in addition to the regular established rate; the abwabs were exactions which were submitted to of necessity, but which, as they were not sanctioned by the law as it formerly stood, could not, according to their notions, be enforced by legal means unless they acquiesced in the demand.

"*3rd.*—Supposing the ryot to have subscribed to the record of his future vassalage, he obtained no permanent benefit by his submission. The rate (*nirk bandee*), or average standard of rents paid in the pergunnah, might at any time be easily raised by compelling several of the inferior cultivators to take *khamar* or waste-land at enhanced rates, and thus to raise the average to the village rates (this was, and is, the common practice of the zemindar in Bengal), and after the expiration of three years the oldest ryot might be compelled by an action at law to pay the same.

"*4th.*—Proof of collusion would be assumed from an excess of land above the quantity specified in the pottah, or from the insertion of lower rates than are usually levied from lands capable of bearing the superior species of agricultural produce, though the one might have resulted from careless measurement and the latter from the improvement of inferior land originally incapable of producing the more valuable descriptions of produce, by the more assiduous or more scientific cultivation of the occupant. It has been said that many zemindars purposely inserted low rates and smaller quantities of land than were actually held in order to forward their own views— a procedure which is not improbable.

"5*th*.—The lease afforded no protection against the consequences of a general pergunnah measurement (XLIV, 1793, section 5; L, 1795, XLVII, 1803, section 5) when by any manœuvres of the description given, a real or fictitious enhancement of rates had been established, or after a public sale of the grantee's interest and title in satisfaction of arrears of revenue. (The Cornwallis Code limited the period of a lease by a proprietor to a ryot [*i. e.*, holder of any degree] to ten years; this limitation was subsequently abolished.)

"6*th*.—A zemindar could only be compelled to abide by the tenor of the pottah by a civil action, which might be kept pending, by the usual course of legal artifice, for a period co-extensive with the unexpired term of the lease itself, and the ryot would in the meantime starve for his presumption in venturing to assert what even the Code admits to be his just rights and privileges."

Difficulties in the way of compulsory interchange of pottahs and kabooliyats.

8. From what has been stated in the preceding paragraphs, it is, we think, clear that, whatever may be the cause, there exists, and always has existed, much reluctance on the part of zemindars to give leases, and possibly on the part of ryots to give kabooliyats, accurately defining the conditions of their tenures. We fear, therefore, that any attempt to render the interchange of any specific form of pottahs and kabooliyats compulsory would lead to general litigation and strife; that it would embitter the relations of landlord and tenant in Behar; that in the end it might possibly injure rather than improve the ryot's condition. Moreover, the compulsory interchange of pottahs and kabooliyats in any express statutory form would involve an enormous increase in the number of registration offices and civil courts, which we do not feel ourselves prepared to recommend.

Recommendation of Mr. Browne as to encouragement of interchange of pottahs.

8. (*a*). On this head Mr. Browne has made a recommendation, to which the committee has acceded, namely, that whenever a court decrees rights of occupancy, it shall compel the interchange of pottahs and kabooliyats specifying the boundaries of the fields in which such rights are decreed.

Proposed compulsory interchange of chittahs, khatians, or memoranda of holdings.

9. It has been proposed to leave the law declaring the ryot entitled to a pottah, defining his status and the conditions of his holding as it is, but make it compulsory on landlords and tenants to interchange chittahs, khatians, or abstract of holdings, and their counterparts. These chittahs would contain merely the areas of fields, rates actually paid, amounts of rent, and instalments thereof.

These documents, it was urged, exist in every putwaree's office. The interchange of them, not involving the determination of questions of status, would not give rise to litigation, while they would certify the ryot of the amount of the annual demand to be made upon him, and would compel the proprietor to obtain the ryot's assent in writing to his liability to pay that demand. On the other hand it was urged that in some districts landholders cannot themselves give the areas of fields in their estates; that the compulsory interchange of chittahs, involving, as it would, the determination of rates actually paid, would lead to litigation. To these arguments it was answered—to the first, that if the landholders of any district are themselves unable to give the areas of their tenants' holdings, the sooner such landlords are compelled to measure their estates, the better both for them and their tenants: to the second, that, however undesirable it may be to drive proprietors and their tenants into court in order to determine questions of status, it is surely desirable that the rates actually paid should at least be defined and ascertained, and not arbitrary and uncertain. With these remarks and the record of the actual finding by the majority of the committee, we propose to leave the matter for the consideration of Government.

9. (*a*). Under this head Mr. Worseley proposed that non-occupancy ryots should be declared entitled to receive pottahs for a term not exceeding five years at the rates hitherto paid by them. The committee was of opinion that there is no need to alter the existing law regarding the right of non-occupancy ryots to pottahs (*vide* page 9 of minutes of proceedings).

Head III.—Use of Counterfoil Receipts.

Counterfoil receipts.

10. The next point at which it has been proposed to improve the rent law is in the giving of receipts.

The present law requires that receipts for rent shall specify the year or years on account of which the rent is acknowledged to have been paid, and it is for the ryot to say on account of what year the payment is made. In practice the ryot is rarely consulted on the subject. Payments are, as a rule, credited to (*hal bakaya*), "current demand and arrears." The year or years to which the payment is credited are not specified. The result is that these receipts are no guide to a court in determining the amount of arrears due for any particular year. Moreover, the loose way in which receipts are written, on scraps of country-paper in no specified form, affords ryots great facilities for fabricicating receipts for sums not really paid. For these reasons a majority of us are of opinion that the use of counterfoil receipts should be insisted on. The form of receipt which we recommend will be found in page 7 of the minutes of our proceedings.

Two of our number (Messrs. Gibbon and Anderson) are opposed to the compulsory use of the counterfoil receipts, on the ground that as the counterfoil part necessarily remains in the hands of the landlord, there is nothing to prevent him, if so bent, from falsifying his accounts, whereas it may be a hardship on the ryot to be bound to produce a receipt in prescribed form. After all due consideration of these opinions, the committee think that it would be an improvement in the present law to declare that receipts shall be in counterfoil, and that the refusal or neglect on the part of the landlord to give a counterfoil receipt in the prescribed form shall be deemed a withholding of a receipt. The committee also think that a suit for rent should not be entertained unless the plaintiff file with the plaint a receipt book for the period in respect of which rent is claimed, or for such additional period as to the court may seem necessary.

Head IV.—Cheapening of Registration.

11. The next point referred for our consideration is the cheapening of registration. It has been suggested that this might be effected by insisting on the use of a printed form of pottah, to be generally adopted in each district after approval by the Collector. From the extract which we have quoted in the *précis* appended to this report it will be seen that this suggestion is as old as the Permanent Settlement itself. It has never been found practicable, and we do not think it practicable now. Sane men entering into a contract, whether it be a lease or other agreement, should, we think, be allowed to adopt any form they may think best suited for the expression of their own intentions. The only feasible suggestions which we have to offer under this head are—

(1)—That the registration law might be so amended as to make it lawful for the parties to a deed to file a copy of it in the sub-registrar's office. The sub-registrar's duty would thus be limited to comparing the original with the copy filed. Copying fees would be saved, and the delay and incidental expenses which attach to the copying of documents would be avoided. The sub-registrars would have to number in serial order all documents thus filed; to certify them as true copies; to have them bound in monthly volumes and transmitted to the district registrar's office, on such stated periods as may be thought necessary. Such copies would, for all purposes, be as valid as the copies now written out in the sub-registrar's offices, at considerable expense, authorized and not authorized, and often, we fear, with much delay and inconvenience to the parties.

(2)—We also recommend that sub-registrars be allowed to go into the interior to register documents without the issue of a commission, as required by the present law.

Our recommendations under this head will be found in page 8 of the minutes of our proceedings.

Head V.—Discouragement of disintegration of holdings, whether by amalgamation or otherwise.

Discouragement of disintegration of holdings.

12. The fifth point which we had to consider is the discouragement of the amalgamation of old and new holdings, as tending to vitiate the ryot's occupancy rights in his holding. The amalgamation and sub-division of holdings in Behar, taken in connection with the zemindar's failure to give pottahs, have made it difficult for ryots, who *de facto* have occupancy rights, to prove the existence of such rights. An examination of the Jummabundee papers of Behar estates has shown that while 60 per cent. of the present ryots have held some land in the villages in which they reside for more than 12 years, less than one per cent. of them hold at present the same area of land which they held 12 years ago. Inasmuch as these ryots hold no pottahs or other documents showing which are the particular fields which they have held for more than 12 years, and which fields were subsequently acquired, it is doubtful whether any one of them could, under the existing law, prove their occupancy rights, even where these rights exist beyond all doubt. This is an evil which is due to the general failure on the part of landholders to comply with an obligation which the law has, from the earliest period of our rule, imposed upon them, namely, that of giving pottahs to their tenants specifying the boundaries and areas of their holdings.

Presumption that a ryot having held *any* land in an estate for 12 years shall be presumed, till the contrary is proved, to have held the whole of this land for 12 years.

13. To remedy this evil we propose to make more clear than it is at present, the presumption of law that every resident ryot who has cultivated *any* land continuously in any estate for 12 years shall be held to have acquired occupancy rights in the whole of his holding in such estate. The effect of this presumption will be that on a ryot having proved continuous residence and cultivation of any land whatever in an estate for 12 years, the *onus* of proving that such ryot has not acquired occupancy rights, in the whole or any particular part of his holding, will be thrown on the zemindar. We need put the reasonableness of this presumption on no higher ground than the maxim, alike of common sense and universally received law, "that where the subject-matter of an allegation lies peculiarly within the knowledge of one of the parties, that party must prove it, whether it be affirmative or negative."

14. When a Behar ryot is taken into court and claims occupancy rights, on the ground that he has cultivated for 12 years, and the zemindar meets him with a denial of these rights, on the score that the ryot has not held the whole, or any particular part of his holding, throughout that period, it is, we submit, the obvious duty of the zemindar to prove which particular parts of the holding have been held for less than 12 years. The zemindar, and he alone, has papers showing when the tenant's occupancy in each field began. Owing to the zemindars failure to give pottahs, the ryot has, and can have, no such proof. It is therefore the duty of the zemindar to establish an allegation advanced on his behalf, and the subject-matter of which lies peculiary within his knowledge. Without discussing farther the legal aspect of this presumption, it is, in our opinion, expedient and just that such a presumption should be specifically recognized. Strong arguments have, we believe, been advanced to show that not only is the presumption in question fully consistent with the letter and spirit of the Permanent Settlement, but that, according to the terms of that Settlement, Government would be justified in declaring that all ***khudkasht*** resident ryots are entitled to occupancy rights in the land they cultivate, as long as they pay the rate current in the pergunnah or village. We refrain from discussing this subject. All we propose to do is to specifically impose the burden of proof on the party who alone can, and ought to, produce proof. We do not think it desirable to restrict the amalgamation of new with old holdings by any arbitrary interference between ryots and landlords. The evils arising from the amalgamation of holdings will, we think, be sufficiently met by the presumption which we have just discussed.

15. With regard to the disintegration of holdings, Sir Stuart Bayley has noticed the practice, on the part of some indigo planters, of violently wresting part of their lands from ryots, or of exchanging ryotee for zerat lands and then entering both as zerat in the Jummabundees. These things are, we believe, of rare occurrence now-a-days, and they are, moreover, provided for by the present law. We propose to define "zerat" as land continuously cultivated by the proprietor or co-sharer for 12 years with his own stock, or by his servants, or by hired labour at his expense. This definition (which is borrowed from the North-West Provinces Rent Act) would clear up any doubt there may be as to the illegality of the practice noticed by Sir S. Bayley.

Ejectment of non-occupancy ryots.

16. The provisions of the present law as to the ejectment of non-occupancy ryots being somewhat vague, we propose to define them more clearly. Section 53, Act VIII (B.C.) of 1869, provides that in a suit for the ejectment of a non-occupancy ryot, the court shall grant a decree in favour of the plaintiff forthwith, on the plaintiff depositing the necessary expenses; but nowhere in that Act do we find it specially stated whether a landlord may or may not, of his own motion, eject a non-occupancy ryot without the institution of such suit. It is obviously consonant with existing law, and with the practice in all civilised countries, that every tenant should have timely notice of the landlord's intention to evict him. This is specially expedient and equitable in this province, where the distinction between non-occupancy and occupancy ryots is confused, and difficult of proof. A landlord should not have arbitary power to eject any tenant without affording him an opportunity of contesting his liability to eviction. In order the more clearly to define the law on this subject, we have borrowed from the Rent Act of the North-West Provinces certain sections, the enactment of which would, we believe, secure non-occupancy ryots against arbitrary and illegal eviction—(pages 14 and 15 of minutes of proceedings.)

Compensation for improvements.

17. It was proposed to confer on a ryot, on the termination of his tenancy, a right to compensation for such improvements suitable to his holding as he may have made during his occupation of the land, providing the letting value of the land has been and continues increased in consequence of such improvements. This principle has been recognized in the Rent Acts of Oudh and the North-West Provinces. It was argued that provisions which are deemed necessary for the protection of the tenantry of Oudh and the North-Western Provinces cannot be other than just and necessary for the protection of the ryots of Behar.

A farther special justification of these provisions will be found in the fact that the ryots of some Behar zemindarees are not only prohibited from making tanks or other improvements for the purposes of irrigation without the zeminder's consent, but when that consent is obtained, the ryot has to execute a registered deed by which he agrees—

(1*st*) to pay the ground-rent of the tank;
(2*nd*) to have no claim to the fish or other profits arising therefrom;
(3*rd*) to keep the tank clear and neat at his own expense;
(4*th*) to pay a penalty of Rs. 200 for violation of any of the foregoing provisions.

Against allowing compensation for improvements, it was argued that there is no demand on the part of Behar ryots for compensation for improvements, and, moreover, there are no special circumstances in Behar to justify this innovation in the existing law. A majority of our number are in favour of allowing compensation for improvements. Some of us are of opinion that no compensation should be allowed under any circumstances, while some think that compensation should, on ejectment or on termination of the tenancy, be allowed for the unexhausted value of all improvements suitable to the holding. For our recommendations on this point we would refer to page 16 of the minutes of our proceedings.

Head VI.—Transferability of Occupancy Rights, and Presumptions in favour of ryots.

18. The presumption of law by which we propose to throw the *onus* of proving the non-existence of occupancy rights on the landlord, provided the

ryot has been in continuous possession of any land in the village or estate, has been already discussed. Some difference of opinion exists as to the expediency of rendering occupancy rights transferable by sale.

Against the principle it was urged—

(*1st*) that occupancy rights are under the present law transferable where it is the local custom to transfer them. There is therefore no need of altering the law;

(*2nd*) that the effect of a measure rendering occupancy rights transferable would be to throw the ryots' lands into the hands of mahajuns or other moneyed men;

(*3rd*) that a measure rendering occupancy rights transferable, being subject to the Hindoo law of inheritance, would lead to much litigation.

In reply to these arguments it was urged that as occupancy rights are already transferable by local custom throughout the greater part of Behar, it would be well to bring the law into harmony with the local practice.

With reference to Mr. Gibbon's objections to the sale and purchase of occupancy rights, it was said that in Shahabad and other parts of Behar, where occupancy rights are at present transferred by sale and purchase, the effect has not been to throw ryots' lands into the hands of mahajuns, or other moneyed men, nor have any difficulties arisen in connection with the Hindoo law of inheritance. The peculiar guzashta tenures of Shahabad are an instance where cultivators, although Hindoos, have developed a custom of sale and purchase as complete in its way as that of the petty talooks of Eastern Bengal.

After due consideration of these arguments, the opinion of a majority of the committee is, however, against rendering occupancy rights transferable by sale and purchase. It is also the opinion of a majority of our number that occupancy ryots should have the power of sub-letting their holdings, and that non-occupancy ryots, holding under a lease, should have the power of subletting for the unexpired term of their leases, provided the zemindar is secured in the due payment of his rent.

Head VII.—Simplification and Amendment of the Distraint Law.

19. On this point Mr. Gibbon proposed that the right of distraint be abolished altogether. By compelling Behar proprietors to adhere to the restrictions which the law imposes on distraint, you would practically deprive them of the only power of distraint which they care to exercise, namely, that of a private distraint or restraint of crops. It is, Mr. Gibbon thinks better to do away altogether with a right which, if exercised according to the intention of the law, would be of little or no value, and which, not being exercised in accordance with law, has in the past, and may in the future, lead to great abuses. In these views a majority of the members concur.

20. In case, however, the proposal to abolish distraint should not meet with the approval of Government, the amendments in the present law which we recommend are that distraint be initiated in a court; that the zemindar shall make to the Collector or other court an application, which may be for distraint of the crops of any number of ryots residing in the same estate or village, showing the amount due from each ryot and the instalments in which the arrear is due; that the Collector shall thereupon make a summary order, a copy of which shall be given to the applicant for service. In addition to this, it was also proposed to make illegal distraint on the part of a person empowered to distrain liable to the same penalties as are provided by the present law [section 99, Act VIII of 1869] for illegal distraint on the part of a person not empowered to distrain. This proposal was, it will be observed, rejected by a majority of one. Those of us who are in favour of making illegal distraint specially punishable, yield only a qualified assent to the amendments in the distraint law above described. We think that the proposed alterations are not sufficient to suppress the illegal practices which now prevail. For our proposals in detail under this head we would refer to pages 10, 11 and 13 of the minutes of our proceedings.

Head VIII.—To limit the right to enhance and make Illegal Enhancement punishable.

21. Our recommendations under this head are—

(*a*) that enhancements shall not be allowed, except—

(1) by written agreement registered under the Registration Act; or
(2) by order of a court under the Landlord and Tenant Act;

(*b*) that enhancement shall not be allowed, except at the suit of a person having a permanent interest on the land the rent of which it is sought to enhance;

(*c*) that any rate of rent decreed by a court on enhancement suit shall not be liable to revision for ten years;

(*d*) that any measurement of land accepted by both parties shall not be liable to revision for ten years;

(*e*) that a co-sharer shall not be entitled to enhance the rent of any ryot otherwise than through a manager authorized to collect the rents of the whole estate;

(*f*) that at least six months' notice of enhancement shall be given before the beginning of the year from which the enhancement is to take effect;

(*g*) that notice of enhancement shall be served in the same way as a summons under the Civil Procedure Code, and that such notice, in addition to the grounds on which the enhancement is claimed, shall also specify the particulars alleged in support of those grounds, namely, the precise particulars of the computation on which the enhancement is claimed.

(*h*) We propose to define "adjacent places" in section 18, Act VIII of 1869, as meaning the same village, or a village immediately adjoining that in which the land is situated.

These restrictions will, we think, be sufficient to prevent illegal and arbitrary enhancements.

Head IX.—To make the Demand of Illegal Cesses Punishable.

22. Under this head we have no suggestions to make. The exaction of illegal cesses is punishable under the present law. The accounts which we propose to have filed in the Collectors' offices will enable a ryot to certify himself of the amount of the zemindar's annual demand. If the ryot voluntarily pays cesses over and above that demand, we do not see how he can be prohibited by law from doing so. All that we desire to secure is that the ryot shall really have a genuine choice in the matter.

Head X.—To recognize and provide by law for the system of payment in kind.

23. Under this head we recommend—

(*a*) that in case of dispute as to the amount or value of the crop, the Collector shall, on application from either party, depute a proper officer to make the division, estimate, or appraisement. This provision we have borrowed from the North-Western Provinces and Oudh Rent Acts:

(*b*) that the danabundi (appraisement) papers be filed in the Collector's office within fifteen days of the appraisement:

(*c*) that where a tenant, without due cause, allows bhaoli lands to lie fallow, he shall be liable to pay a cash rent for such lands in respect of the period during which the land was fallow, such cash rent not to exceed that paid for the same description of land in the neighbourhood:

(*d*) that where occupancy rights have been established, the occupancy ryot or the zemindar shall be entitled to commute bhaoli into cash tenures at the cash rates paid by other occupancy ryots in the neighbourhood, and if cash tenures do not exist in the neighbourhood, at a cash rate equivalent to the average value of the zemindar's share of the produce, calculated on the outturn of the preceding five years:

(*e*) that where the proportion of the produce to be taken by the zemindar is not specified on any written agreement, it shall be presumed that the zemindar is entitled to half and the ryot to half.

24. In the papers referred for our consideration the evils of the bhoali system in South Behar are described by Baboo Bhemola Churn Bhattacharjeea, Deputy Collector of Behar, as follows :—"The next engine of oppression in the hands of the zemindar is not to make the danabundi (appraisement of crops) at all, but to let the grain rot in the threshing floor or in the field. When the ryots decline to accept the zemindar's terms as to the share of the produce, the zemindar declines to make the appraisement. One year's loss of rent is nothing to him (the zemindar), but to the ryot the loss of one year's crop means starvation. The grain is allowed to rot in the fields, or is eaten up by birds, unless the ryots come round in time." "Another mode of oppression," writes the same gentleman, "is that after the danabundi or agorabattai (appraisement or apportionment of the crops) has been made, the zemindars do not allow the ryots to take away their grain."

25. It will be seen from the above description that the zemindars of South Behar practically take, by way of rent, as much of the crop as they choose to claim. The existing law makes no special provision for the realization of rents in kind. It therefore intended that rents in kind should be realized by regular suit or by distraint, in the same way as where rent is payable in cash. The practice, however, is for the zemindar to prohibit the cutting or removal of the crop till the tenant agrees to his appraisement or division of the produce, as the case may be. The evils attendant on the system described will, we think, be sufficiently met by the measures which we recommend, and which will be found in detail in page 12 of the minutes of our proceedings.

Head XI.—The provision of a Summary Procedure for the Realization of Rents.

26. Under this head Mr. Browne brought forward proposals for a Summary Procedure Bill, to be extended to Behar in case the right of distraint is abolished. Mr. Browne's proposals are—

1st.—That landlords be allowed to sue summarily for arrears of rent of one year's standing or less; that such suits shall be entered in a register to be called the "Summary Register." Such summary suits shall be instituted on payment of a small fixed fee, the amount of which is to be determined by the Local Government.

2nd.—That if in any such summary suit the tenant denies altogether the relationship of landlord and tenant, the suit shall be dismissed, and the zemindar shall be left to sue in the ordinary way.

3rd.—If the relationship of landlord and tenant is admitted, the tenant shall be allowed to raise no other plea than that of payment. After deciding on that plea, the court shall pass orders for payment of amounts admitted, if any, and of amounts respecting which the plea of payment has been raised, but not proved to the satisfaction of the court. The plaintiff will be left to sue for the balance of his claim in the ordinary way, that is to say, by regular, as distinguished from summary, suit.

4th.—That when a decree is passed for an arrear of rent, whether due at the end of the year or not, and the plaintiff has included in his plaint a prayer for ejectment of the defendant, such defendant shall at the end of the year be liable to be ejected from the land in respect of which the arrear is due, unless the amount of the decree, with interest and costs of the suit, be paid up within thirty days from the date of the decree.

To show the way in which this procedure would work in practice, we may take a concrete example :—

A, a ryot, is sued by B, his landlord, for one year's rent, alleged to be Rs. 25. A says that his rent is only Rs. 10, and alleges that he has paid that amount. The court would only go in the question of payment of Rs. 10, and B would have to sue for the balance of his claim in the regular way.

We think this procedure better than that suggested in the Bengal Summary Procedure Bill:

1st.—Because under the Bengal Bill (section 10) a summary suit cannot be entertained without satisfactory proof that rent at the rate claimed has been paid in respect of the holding during the preceding year or years.

This section would, we fear, render the Summary Procedure Bill ineffectual in Behar. The rate would in every case be disputed, the whole case would have to be gone into, and the proceedings would be nearly as dilatory as they now are under the present law.

2nd.—We prefer Mr. Browne's proposals to the Bengal Summary Procedure Bill, because the latter leaves it to the discretion of the court to allow the tenant to appear and defend the case or not as the court deems fit.

We are not in favour of conferring any such discretion on the courts. We think the practical working of the Bengal Bill would be that the courts, according to the bias which may be given them, would either allow the ryot to defend every suit, or that they would arbitrarily refuse permission to defend suits. In the former case the Bill would be inoperative, and in the latter much hardship might be caused to the ryots. For these reasons a majority of our number prefer Mr. Browne's proposals to the Bengal Bill. One of us (Mr. Gibbon) prefers the Bengal Bill, so far modified that a ryot shall not be liable to ejectment except at the end of the year, while another (Mr. Anderson) prefers the Bengal Bill in its entirety.

Head XII.—The empowering Collectors to effect a settlement in disputed case.

27. A majority of us think that no action under this head is generally required in Behar. In special cases the Settlement Bill may be found useful, but these cases can be separately dealt with as they arise. Two of our number (Babus Joy Prakash Lal and Harbans Sahai) think that the Hon'ble Kristodas Pal's Bill will be of much benefit in Behar, while another thinks that the Bill, if modified in certain particulars, is much required, and that it would be of great benefit to zemindars and ryots alike,.

Head XIII.—Miscellaneous.

28. In addition to the measures summarized under the preceding heads, we also recommend the following amendments in the existing law:—

1st.—Where the instalments in which rent is payable have not been settled by a written agreement between the parties, that the Collector be empowered to fix and declare for each district, or part of a district, the instalments in which rent shall be payable.

2nd.—That measurements of estates or tenures be not allowed oftener than once in ten years, and only on the part of a person, or body of persons, representing the entire proprietary interest. A co-sharer may dispute the accuracy of the measurement within six months of its completion.

3rd.—That plaints for arrears of rent should specify the boundaries and arrears of the fields and plots in respect of which the arrear of rent is claimed.

4th.—That where there is a dispute between rival rent claimants as to which of them is entitled to the whole or any quota of a ryot's rent, and the ryot is doubtful as to which of the rival claimants is entitled to the rent, he shall be entitled to deposit it in court; that such deposit shall have, as far as the ryot is concerned, the same force and effect as if he had paid the amount deposited to the person legally entitled to it. The existing provisions as to deposits in court contemplate disputes as to the amount, not the distribution, of the rent.

29. With a view to defraying the expenses of the extra establishment required for the hearing of summary suits, for the enforcement of legal distraint, for the suppression of illegal distraint, for the division and appraisement of crops in bhaoli teunres, and for carrying out our other recommendations, it was proposed—

(*a*) to legalise the cess known locally as *hisabana*, and to have it paid into the Government treasury as a patwarees' and kanoongoes' fund, in the same way as is done in the North-West Provinces.

(*b*) to charge court fees on applications for distraint, such fees to be assessed at double the ordinary *ad valorem* rate for a suit for the amount claimed. At present such applications escape without any *ad valorem* court fee. The word "DISTRAINT" might, it was suggested, be written across stamps borne by such applications; a separate account of the amount of such fees might be opened, and the proceeds might be appropriated to the payment of the necessary establishment.

(*c*)—It was also proposed that applications for service of enhancement notices (section 14, Act VIII of 1869) should bear court fees as in a civil suit, such fees to be assessed on the capitalised value of the proposed enhancement.

30. In support of these proposals it was urged (1) that it is not fair to burden imperial funds with the special expenditure required in order to remedy particular abuses in a particular province; (2) that in principle it is the same thing whether the assistance of the court in recovering rent is sought by process of distraint or by regular suit. If the plaint in the latter case bears court fees, so should application for distraint in the former. The process of distraint being the more open to abuse, should, it was argued, be discouraged, and should therefore bear higher court fees; (3) similar arguments were advanced in favour of assessing court fees on enhancement notices. A majority of our number think that it is not expedient to impose any new cesses. We are also of opinion that, inasmuch as the zemindar seeks to recover, whether by distraint or by enhancement notice, only his dues, no special court fees should be charged.

Mr. Browne thinks that the summary suits will pay for themselves, while Mr. Hodgkinson is of opinion that the stamp fees to be paid by landlords on filing their accounts, and by ryots for copies of these accounts, will meet the other expenses to be incurred.

In these views a majority of us concur.

31. We beg to say tuat our proposed amendments and alterations affect so many provisions of the present law that we do not deem it sufficient to draft a supplementary Bill. We think it in every way expedient that the whole rent-law should be re-cast, and that the intermixture of the subjects which occur in the present law should be avoided.

To re-cast the whole law would be, we regret to find, a task which, for various reasons, is beyond our powers. We would therefore respectfully request that the drafting of a Bill be undertaken by a trained officer of the Legislative Department.

32. In conclusion, we would express a hope that the results of our deliberations may in some degree help towards the framing of a rent-law for Behar, which will prove beneficial alike to tenant and landlord, and which will thus promote the general prosperity of the province.

(*Signed*) F. M. HALLIDAY,
Commr. of Patna. } *President of the Committee.*
J. F. BROWNE,
Judge of Patna.
C. F. WORSLEY,
Collector of Mojufferpore.
G. TOYNBEE,
Collector of Patna.
D. N. REID,
Indigo Planter, Sarun.
W. B. HUDSON,
Indigo Planter, Chumparun.
G. ANDERSON,
Indigo Planter, Dhurbhunga.
BHEMOLA CHURN BHUTTACHARJEEA,
Deputy Collector.
BHOOP SEN SINGH,
Govt. Pleader, Gya. } *Members.*
M. FINUCANE, C. S. ... ... *Secretary.*

APPENDIX I.—*Précis of Declarations of Government as to interchange of Leases and Counterparts.*

1. "On the 14th May 1772 it was determined to conclude a settlement of these provinces (Bengal, Behar and Orissa) for a period of five years. It was at the same time resolved that as the Company have determined to stand forth as *Dewan*, the servants employed in the management of collections shall be henceforward styled Collectors, instead of Supervisors." Rules were therefore passed for the guidance of the Collectors and Dewans, and the following provisions were made for the security of the ryots: "That the farmer or contractor with Government (*i. e.*, the predecessors of the present zemindars) shall not receive *larger rents from ryots than the stipulated amount of the pottahs on any pretence whatever*; that no *mathoots* or assessments under the name of *mangni*, bouree gunda sood, or any other abwab or tax, shall be imposed upon the ryots; that those articles of abwab which are of late establishment shall be carefully scrutinised, and, at the discretion of the committee, abolished, if they are found to be oppressive and pernicious."—*(Harrington's Analysis, Volume II, pages* 12 *and* 13.*)* On conviction for a violation of the foregoing provision, the [then] farmer (*i. e.*, the now proprietor) "*was to be compelled to re-pay to the ryot the sum* EXTORTED, *and to Government a penalty of equal amount, and for a repetition of the offence, or in a notorious case, the farmer's lease was to be annulled.*"

Declarations of ryots' title to pottahs before the Permanent Settlement.

2. In 1776, the five years' settlement being about to expire, the Governor General (in a minute dated 1st November, printed in Colebroke's Digest, page 206) proposed that special officers should be deputed, among other things, "to secure the ryots in perpetual and undisturbed possession of their lands, and to guard them against arbitrary exaction"—an object which, the

Governor General remarked, could not be secured " by proclamations and edicts, nor by indulgences to zemindars and farmers." The Governor General added that, "*notwithstanding the solemn engagements of the zemindars and the peremptory injunctions of Government, not a pottah had yet been granted, nor will be granted unless further measures are taken.*"—(Phillips' Tagore Law Lectures, 1876, page 251. Harrington's Analysis, page 35.)

Ryot's title to a pottah and zemindar's duty to give pottahs declared in discussions connected with the Permanent Settlement.

8. The farming settlements terminated in 1777. Annual settlements were made from 1778 to 1786. Much power seems to have been thrown into the hands of the zemindars by Government at this time. In 1787 Lord Cornwallis, in accordance with the directions of the Board of Directors, instituted inquiries of a comprehensive character, with a view " to settling a permanent revenue with each zemindar for a long term of years." In connection with these inquiries we find that Mr. Shore, in his minute respecting the Permanent Settlement of lands in the Bengal Provinces, dated 18th June 1789 (*printed in Appendix No.* 1 *to the fifth Report of the Select Committee of the House of Commons appointed to enquire into the affairs of the East India Company*, 1812), describes the condition of the ryots and their reluctance to accept pottahs in words which, with slight modifications, might not inaptly be applied to the state of things existing in Behar up to the present day.

" The abuses," remarked Sir John Shore, " that subsist are great, and more important to be known. Amongst these the following may be enumerated :—

" *First.*—The arbitrary impositions of the zemindars, farmers and others to which the ryots are subject, which are generally measured by their supposed ability to pay them. The pretences for these impositions are various; the death of a zemindar, the birth of a son, any increase by Government upon the zemindar, are some amongst the number. A stipulation is sometimes exacted, and without ceremony given, that these taxes shall terminate with the year, but they are seldom relinquished without the substitution of others to an equivalent amount.

" *Second.—The want of formal engagements between the renters and the ryots. This is a very general complaint, as it renders it almost impossible to detect exactions.*

" *Third.*—The inequality of the assessment, to the advantage of the superior, and to the great injury of the inferior, ryots, established by the influence or impositions of the former.

" *Fourth.*—The indefinite terms of the pottahs in some places, which neither specify the quantity nor the quality of the land, or rate of payment.

" *Fifth.*—The arbitrary custom of levying the deficiency occasioned by failures in some parts of a district upon the other ryots.

" *Sixth.*—The continual breach of engagements with the ryots on the part of the zemindars or landlords and renters.

Seventh.—The want of regular discharges to the ryots for the rents which they pay.

" On the other hand, the ryots derive advantages even from abuses. The want of engagements, or of precision in the terms of them, affords them opportunities of imposing upon the landlords. Artifice is opposed to exaction, and often with success. They cultivate lands of which there is no account, and hold them in greater quantity than they engage for : hence they are enabled to pay rents and cesses which appear extortionate. They hold lands at reduced rates by collusion ; obtain grants of land fit for immediate cultivation on the reduced terms of waste land, and, by management with a renter at the close of a lease, procure fictitious pottahs and accounts, to be made out with a view to defraud his successor.

" It has been found that the ryots of the district have shown an aversion to receive pottahs, which ought to secure them against exaction ; and this disinclination has been accounted for in their apprehensions that the rates of their payments being reduced to a fixed amount, this would become a basis of future imposition. But admitting this to have its weight, the objection may be also traced to other sources. In the preceding explanations the Collector of Rajshahye informs us ' that he fears the ryots would hear of the introduction of new pottahs with an apprehension that no explanation could remove.'

"In almost every village, according to its extent, there is one or more head ryot, known by a variety of names in different parts of the country, who has in some measure the direction and superintendence of the rest. For distinction I shall confine myself to the term *mundul*; he assists in fixing the rent, in directing the cultivation, and in making the collections.

"This class of men, so apparently useful, seem greatly to have contributed to the growth of the various abuses now existing, and to have secured their own advantages, both at the expense of the zemindar, landlord, renter, and inferior ryots.

"Their power and influence over the inferior ryots is great and extensive; they compromise with the farmer at their expense, and procure their own rents to be allowed, without any diminution in what he is to receive, by throwing the difference upon the lower ryots, from whom it is exacted by taxes of various denominations. They make a traffic in pottahs, lowering the rates of them for private stipulations, and connive at the separation and secretion of lands. If any attempt is made to check the abuses, they urge the ryots to complain, and sometimes to resist. In Beerbhoom a striking instance of this has been exhibited. When an attempt was made to equalise the assessment of the ryots, by removing the burthen from the lower class and resuming the illegal profits of the munduls [called in Behar jeth-ryots], an immediate opposition was made, and the complaints came to Calcutta. The Gonernment was obliged to interfere with a military force to anticipate disturbances, and at present the *ryots are apparently averse to an arrangement proposed for their benefit, and upon principles calculated to ensure it.* On a former occasion, when a general measurement was attempted by the zemindar of the same district as a basis of a general and equal assessment, the munduls, by a contribution, prevailed upon him to forego it. In Purneah this influence has equally been exerted to interrupt the power and duties of the Collector. In Rajshahye we are informed by the Collector that the head munduls are become the real masters of the land, and the first object of a zemindar should be to effect a gradual reduction of their power."

In the same minute Mr. Shore proceeds to state (*page 207 of the Fifth Report*) the several propositions which had been made at various times "for the introduction of regularity and the correction of existing abuses." Mr. Francis," he says "*proposed that it should be made an indispensable condition with the zemindar* that *in the course of a stated time he shall grant new pottahs to his tenants, either on the same footing with his own quit-rents, that is, as long as the zemindar's quit-rent remains the same, or for a term of years, as they may agree. The former is the custom of the country. This* will become a new *assil* jumma for each ryot, and ought to be as sacred as the zemindar's quit-rent. The pottah should be expressed in the simplest terms possible without a single abwab or *muthote*—so much per beegha of land which he cultivates, varying only according to the articles of produce or quality of the soil.—(Paras. 233-244.)

"By some it has been proposed that the Collectors should grant pottahs to the ryots, and we have, I believe, on some occasions authorized this measure, but of late the applications on this subject have been postponed for general considerations."—(Para. 411.)

Notwithstanding these injunctions, pottahs not given.

4. Notwithstanding the peremptory injunctions for interchange of pottahs and kabooliyats, only one Collector, namely, the Collector of the 24-Pergunnahs, was able to report in 1789 "that a form of pottah had already been adopted for the lands in his division; that pottahs were granted according to that form, and that a general register of them was kept; and it is a significant circumstance that in 1832 we find it recorded "that in the villages of the 24-Pergunnahs which comprise what is denominated the Honorable Company's zemindari (and in these only) the rights of the ryots, were fully recognised and maintained, and exist to this day."—*Land Tenure, by a Civilian*, 1832).

Provision made in the decennial settlement for interchange of pottahs and kabooliyats.

5. We now come to the decennial settlement, which, in the words of the Select Committee of the House of Commons, "led to one of the most important measures ever adopted by the East India Company, in reference to themselves by fixing the amount of their land revenue in perpetuity, and to the landholders in the establishing and conveying to them rights hitherto unknown

and unenjoyed in this country." On the conclusion of the decennial settlement a reference was made by the Governor General to the Board of Directors, asking their approval to rendering the settlement just concluded permanent and fixed for ever. The Directors in their reply, dated 29th September 1792, expressed their assent; but added "that they considered the settlement of rents in perpetuity, not as a claim to which the landholders had any pretensions, founded on the principles or practice of the native Government, but as a grace which it would be good policy for the British Government to bestow upon them. In regard to the proprietary right to the land, the recent inquiries had not established the zemindar on the footing of the owner of a landed estate in Europe, who may let out portions, and employ and dismiss labourers at pleasure; but, on the contrary, had exhibited, from him down to the actual cultivator, other inferior landholders styled talookdars and cultivators of different descriptions, whose claim to protection the Government readily recognised, but whose rights were not, under the principles of the present system, so easily reconcilable as to be at once susceptible of reduction to the rules about to be established in perpetuity.

"These the Directors particularly recommend to the consideration of the Government, who, in establishing permanent rules, were to leave an opening for the introduction of any such in future as from *time* to *time may be found necessary to prevent the ryots being improperly disturbed in their possessions or subjected to unwarrantable exactions. This, the Directors observed, would be clearly consistent with the true practice of the Mogul Government, under which it was a general maxim* that *the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied; and this (they further observed) necessarily supposes that there were some limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar*, for otherwise such a rule would be nugatory; and in point of fact the original amount seems to have been anciently ascertained and fixed by an Act of the Sovereign. Subsequent inquiries, particularly in the Deccan and more southern part of India, have confirmed these observations. The division of the crop or produce, taken in money or in kind, fixes and limits this demand; and as long as the ancient rules were scrupulously observed, the State and its subjects derived a mutual advantage from the increase of cultivation, while the *rate* of taxation remained fixed and invariable. Notwithstanding the foregoing reservations, the advantage actually to be conferred, in rendering the amount of revenue which the landholders had recently entered into voluntary engagements to pay, perpetual or fixed for ever, and thereby securing them from any further demand of rent or tribute, or of any arbitrary exaction whatsoever, was so new, so unexpected, and of such inestimable value to the landholders, as led the Directors to believe would induce them assiduously to employ themselves in improving their estates, and, on the other hand, would place the security of the public revenue on a solid basis founded on the growing prosperity of the country."

Specific declarations of the permanent settlement as to zemindar's obligation to give pottahs.

6. On the authority conveyed in the Directors' letter, Lord Cornwallis proceeded to notify, in 1793, the permanency of the decennial settlement. To prevent any possible misconception, the proclamation distinctly declares that "it being the duty of the ruling power to protect all classes of the people particularly the helpless, the Governor General in Council reserves the right to make such regulations as may be necessary from time to time for the protection and welfare of the dependent talookdars, ryots, and other cultivators of the soil." Under the rules of the decennial settlement it was provided—

(*a*) that zemindars should prepare a suitable form of pottah and submit it to the Collector, who, after approval, was to notify to the ryots that such pottah might be obtained, and no other form of pottah was to be allowed (Article 61):

(*b*) rents were to be specifically stated in the pottah by whatever rule or custom they were regulated (Article 60):

(*c*) landholders were required to prepare and tender pottahs for the adjusted rent, and were to be fined for refusal (Article 62):

(*d*) landholders were allowed to the end of 1198 to prepare and deliver pottahs. After that period no engagements for rent contrary to those ordered were to be valid, and claims made by landholders on engagements on which the *assul* rent and abwabs had not been consolidated were to be nonsuited with costs.—(Amended regulation for decennial settlement, Article 65.)

7. These provisions, forming as they do part of the permanent settlement, were, with modifications and amendments re-enacted by Regulation VIII of 1793, which, in section 59, again reiterates the declaration that "actual proprietors, dependent talookdars, and farmers were required to cause a pottah for the adjusted rent to be prepared and tendered to the ryot, either granting the same themselves, or entrusting their agents to grant the same."

Regulation V of 1812, section 3, repealed the provision for rendering all pottahs not in the prescribed forms invalid, and declared zemindars entitled to grant pottahs in such form "as the contracting parties might deem most convenient and most conducive to their interests."

Act X of 1859 and Act VIII of 1869 (section 2) declare that every ryot *is entitled* to receive a pottah from the person to whom the rent of the land cultivated by him is payable. The tender of a pottah entitles the landholder to receipt of a kabooliyat in conformity with the terms of the pottah.

It thus appears that, while under the old regulations, landholders were *bound* to render pottahs in prescribed forms, failing in which they were liable to be nonsuited with costs, more recent laws and regulations leave it optional with them to tender specific forms of pottahs or not, as they think fit, and merely declare that the ryots are entitled to pottahs. These the ryots can now obtain by regular suit, but only with an amount of delay and expense which has practically rendered the privilege a nullity.

APPENDIX II.—*Note on Limitation of Enhancement of Rents.*

At the instance of the Commissioner of Patna the following note has been drawn up with a view to showing that the limitations on the right to enhance, proposed by the Committee, are not inconsistent either with the rights conferred on proprietors by the permanent settlement, or with the ancient customs of this country.

Hindoo law (1).—According to the ancient Hindoo law, "cultivated land was the property of him who cut away the wood or who cleared and tilled it."—*Munnoo Smrita, Chapter IX, Sholk* 44, *Land Tenure, by a Civilian, page* (1).

"The right so acquired might be sold, bequeathed, or otherwise alienated at the discretion of the individual who cultivated it."—(*Idem.*)

"Land under cultivation was liable to a tax to the State of a certain proportion of its produce, the amount of which was an eighth, sixth, or twelfth part of the produce, according to the capabilities of the soil and expense of cultivation. *The demands of Government were limited to this amount except on occasions of great public emergency.*"—(*Idem, page* 2.)

Extracts from the Institutes of Munnoo (quoted by the author pages 1 to 20) go to show that the proprietary right in the soil was vested neither in the Sovereign nor his tax-gathers, but in the ryot or cultivator; that the State claimed and received a portion of the crop raised in consideration of the protection afforded to the cultivator under a regular Government. To the same effect was the Mohamedan law, as is shown by the extracts from Mohamedan law books of great celebrity quoted by the author of "*Land Tenure by a Civilian,*" pages 33 to 39 (*also "Baillie's Land Tax introductory essay*).

It is unnecessary to enter into the discussions which arose in connection with the decennial settlement as to who was the real proprietor of the soil, whether the actual cultivator, the zemindar who collected the Government tax, or the Sovereign. It is sufficient to note that a Select Committee of the House of Commons, on consideration of the best evidence that could be advanced on the subject, recorded, in 1812, its opinion on the position of zemindars before and after the permanent settlement in the following words:—

"In the extensive plains of India a proportion, estimated in the Company's provinces at one-third by Lord Cornwallis, at one-half by others, and by some at two-thirds of land capable of cultivation, lies waste, and probably was never otherwise. It became, therefore, of importance to the native Governments, whose principal financial resource was the land revenue, to provide that as the population and cultivation should increase, the State might derive its proportion of advantage resulting from this progressive augmentation. Whatever might be the motive of its introduction, the rule of fixing the Government share of the crop had this tendency. This rule is traceable as a general principle through every part of the Empire which has yet come under the British dominion, and undoubtedly had its origin in times anterior to the entry of the Mohamedans into India. *By this rule the produce of the land, whether taken in kind or estimated in money, was understood to be shared in distinct proportions between the cultivator and the Government.* The shares varied when the land was recently cleared and required extraordinary labour; but when it was fully settled and productive, the cultivator had about two-fifths, and the Government the remainder. The Government share was again divided with the zemindar and the village offiecrs, in such proportion that the zemindar retained no more than about one-tenth of this share, or little more than three-fiftieth parts of the whole; but in instances of meritorious conduct the deficiency was made up to him by special grants of land, denominated *nauncaur* (or subsistence). The small portions which remained were divided between the *mokuddim*, or head cultivator of the village, who was either supposed instrumental in originally settling the village, or derived his right by inheritance or by purchase from that transaction, and had still the charge of promoting and directing its cultivation; the *pausbaun* or *gorayat*, whose duty it was to guard the crop, and the *putwaree* or village accountant, perhaps the only inhabitant who could write, and on whom the cultivators relied for an adjustment of their demands and payments to be made on account of their rents."

Further on in the same report the Select Committee proceed to describe the changes in the native system which were introduced by the Permanent Settlement. Extracts from this description have been already quoted. Whoever was the real proprietor before the Permanent Settlement, that settlement *did*, at all events, distinctly declare that zemindars were to be considered as the real proprietors for the future. But the declaration was equally distinct that "*a property in the soil was not to be understood as conveying the same rights as in England; the difference being as great as between a free constitution and an arbitrary power*—(*vide* Sir John Shore's minute printed in 5th report).

Sir John Shore, in his minute dated 8th December 1789 (*Appendix* 5 *to* 5*th Report, page* 478), remarked that, "though the interference on the part of Government between tenants and zemindars was absolutely necessary, yet this interference was an ivasion of proprietary rights and an assumption on the part of Government of the character of landlord which belong to the zemindar." In answer to Mr. Shore, Lord Cornwallis, in a minute dated 10th February 1790 (*printed* 5*th Report, Volume I, page* 486), wrote a follows:—

"I agree with Mr. Shore that some interference on the part of Government is undoubtedly necessary for effecting an adjustment of the demands of the zemindars upon the ryots; *nor do I conceive that the former will take alarm at the reservation of this right of interference when convinced that Government can have no interest in exercising it, but for the purposes of public justice.* Were the Government itself to be a party in the cause, they might have some grounds for apprehending the result of its decisions.

"Mr. Shore observes that this interference is inconsistent with proprietary right, that it is an encroachment upon it to prohibit a landlord from imposing taxes upon his tenant, for it is saying to him that *he shall not raise the rents of his estates;* and that if the land is the zemindar's, it will only be partially his property, whilst we prescribe the quantum which he is to collect, or the mode by which the adjustment is to take place between the parties concerned.

"If Mr. Shore means that after having declared the zemindar proprietor of the soil in order to be consistent, we have no right to prevent his imposing new abwabs or taxes on the lands in cultivation, I must differ with him in opinion. *Unless we suppose the ryots to be absolute slaves of the zemindars, every beegha of land possessed by them must have been cultivated under an express or implied agreement that a certain sum should be paid for each beegha of produce, and no more. Every abwab or tax imposed by the zemindar over and above that sum is not only a breach of that agreement, but a direct violation of the established laws of the country. The cultivator therefore has in such case an* *undoubted right to apply to Government for the protection of his property*, and Government is at all times bound to afford him redress. I do not hesitate, therefore, to give it as my opinion that the zemindars neither now nor ever could possess a right to impose taxes or abwabs upon the ryots; and if, from the confusions which prevailed towards the close of she Mogul Government, or neglet, or want of information, since we have had the possession of the country, new abwabs have been imposed by the zemindars or farmers, that Government has an undoubted right to abolish such as are oppressive and have never been confirmed by a competent authority, and to establish such regulations as may prevent the practice of like abuses in future.

" *Neither is the privilege which the ryots in many parts of Bengal enjoy of holding possession of the spots of land which they cultivate, so long as they pay the revenue assessed upon them, by any means incompatible with the proprietary rights of the zemindars. Whoever cultivates the land, the zemindars can receive no more than the established rent, which in most places is fully equal to what the cultivators can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression, from which he could derive no benefit.* The practice that prevailed under the Mogul Government of uniting many districts into one zemindari, and thereby subjecting a large body of people to the control of one principal zemindar, render some restriction of this nature absolutely necessary. The zemindar, however, may sell the land, and the cultivators must pay the rent to the purchaser.

" *The rents of an estate can only be raised by inducing the ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste land which are to be found in almost every zemindari in Bengal.*"

The Select Committee* who framed Act X of 1859, in their report, presented to the Legislative Council of India, dated 26th March 1859, made the following remarks regarding occupancy rights and the limitation of enhancement of rents :—

" *Section V.*—The original Bill, following the phraseology of the *existing law*, declared ryots not holding at fixed rates entitled to pottahs at pergunnah rates." This expression has been objected to on the ground that there are really no known pergunnah rates. The recognition of a right of occupancy implies necessarily some limit to the discretion of the landholder in adjusting the rent of persons possessing such a right. There was a discussion on this subject between the North-Western Provinces, the Sudder Court, and the Board of Revenue in 1850, and it was then apparently admitted that "it was the acknowledged right of the ryot to hold at customary† and fair rates." We have adopted similar phrases.

Section VI.—The laws in force speak of 'khoodkasht ryots' as possessing rights of occupancy, and in some places the word '*khoodkasht*' seems to be considered as synonymous with 'resident.'

"Resident was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy, and it appears that, after much inquiry, it was prescribed by an order of the North-Western Provinces in 1856, as most consistent with the general practice and recognized rights, that a holding of the same land for 12 years should be considered to give a right of occupancy."

MINUTES OF THE PROCEEDINGS OF THE BEHAR RENT COMMITTEE.

THE first meeting of the Committee was held at Sonepore on the 9th of November 1878.

PRESENT.

1—F. M. Halliday, Esq., Commissioner of Patna, *President*.
2—J.F. Browne, Esq., Judge of Patna.

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* NOTE.—The Select Committee consisted of the following gentlemen:—Sir B. Peacock, H. B. Harrington, H. Ricketts, E. Corrie.

† Mamooli and Wajibee.

3—C. F. Worsley, Esq., Collector of Mozufferpore.
4—G. J. S. Hodgkinson, Esq., Collector of Sarun.
5—G. Toynbee, Esq., Collector of Patna.
6—W. B. Hudson, Esq., Indigo-planter, Chumparun.
7—D. Reid, Esq., Indigo-planter, Sarun.
8—Babu Bemola Churn Bhuttacharjeea, Deputy Collector.
9— „ Bhoop Sen Singh, Government Pleader, Gya.
10— „ Joy Prakash Lall, Manager of Doomraon Raj.
11— „ Hurbuns Sahai, Pleader, Arrah.
12—M. Finucane, Esq., C.S., *Secretary*.

The President, in opening the proceedings, said that two draft Bills had been drawn up for the consideration of the Committee—one by Mr. Worsley, the Collector of Mozufferpore; the other by Mr. Finucane, the Secretary of the Committee. Mr. Worsley's draft Bill, which had been circulated among the members of the Committee, was, they would observe, new both in form and substance. Mr. Worsley had, as pointed out in the memorandum attached to his draft Bill, brought together the most approved suggestions which had been made for the amendment of the rent law in Behar, and in pursuing this object he had discarded the awkward intermixture of subjects displayed in the Bengal Acts, and adopted the more scientific and lucid arrangement of the North-Western Provinces Acts. Mr. Finucane's draft was based on the existing law, certain sections being amended or supplementary sections embodying the various suggestions made being added.

The President invited the attention of the Committee to an extract from the Government letter to Mr. Moloney, in which it is stated that the less radical the interference with the existing law, the more chance there is of the proposals of the Committee being accepted. The question was then put to the vote whether Mr. Worsley's or Mr. Finucane's draft should be taken as the basis of discussion. For making Mr. Worsley's Bill the basis of discussion, the following gentlemen voted:—

Messrs. Hodgkinson, Worsley, Hudson, Reid, Babus Hurbuns Sahai and Joy Prakash Lall.

For making Mr. Finucane's draft the basis of discussion—

The President, Messrs. Browne, Toynbee, Finucane, and Babu Bemola Churn Bhuttacharjeea.

The Committee then proceeded to discuss Mr. Worsley's Bill section by section.

Section 1 was amended by the insertion of the words "or in any district thereof" after "province of Behar." The section thus amended (quoted below) was agreed to—

(1)—This Act may be called the Behar Rent Act, 1879, and shall take effect in the province of Behar or in any district thereof from the date which the Lieutenant-Governor of Bengal shall fix by an order published in the *Calcutta Gazette*.

Section 2 was amended by the insertion of the words "or in any district thereof to which this Act shall be extended" after the words "province of Behar." The amended section (quoted below) was agreed to—

(2)—When, and so soon as this Act shall commence and take effect, the Landlord and Tenant Procedure Act, 1869, shall cease to have operation or effect in the province of Behar, or in any district thereof to which this Act shall be extended, save so far as it repeals or modifies any other Regulations or Acts, and save so far as regards suits or proceedings which, before the time of commencement of this Act, shall have been instituted before any court.

Section 3, *clause* 1, was allowed to stand over for future discussion.

Clause 2, quoted below, was agreed to—

Rent means whatever is to be paid, delivered, or rendered by a tenant on account of his holding, use, or occupation of land.

Clause 3 was amended by the insertion of the word "entire" before "estate." The amended clause, as quoted below, was agreed to—

(3)—Proprietor means a person or body of persons being in possession of an entire estate or revenue-free property as owner or owners thereof, and includes a sharer or body of sharers being in possession of separate lands held in severalty, or of certain specific mouzahs or lands forming part of an estate or revenue-free property under such circumstances as are described in sections 12 and 9 (*b*) of the Estates Partition Act 1876, and section 11 of Act XI of 1859.

Clauses 4 and 5, quoted below, were agreed to—

(4)—Co-sharer means any person being in possession of an undivided share in an estate or revenue-free property as owner thereof.

(5)—Landholder means the person to whom a tenant is liable to pay rent.

Clause 6, quoted below, was reserved for future discussion—

Resident ryot means a cultivator whose homestead is situated in the same estate or village in which he holds lands, AND whose father or other relative from whom he has inherited resided and held land in the said same estate or village: provided that the aggregate period for which such ryot and his father or such ryot and his other relative aforesaid may have so resided and held land shall have been not less than 12 years.

Clause 7, quoted below, was agreed to—

Non-resident ryot means a cultivator who holds land in an estate or village other than that in which his homestead is situated.

Clause 8 was amended by the substitution of the words "agricultural year of the district" for "Fusli year." The amended clause, quoted below, was agreed to—

Month means a month of the agricultural year of the district.

Clause 9 was amended by the substitution of the words "agricultural year of the district" for "Fusli year." The amended clause, quoted below, was agreed to—

Year means the agricultural year of the district.

Clause 10, quoted below, was agreed to—

The Court means a Civil Court having jurisdiction in any suit or matter.

Section 4, referred to below, was agreed to—

Definition of Collector taken *verbatim* from section 1, Act VII (B. C.) of 1869.

CHAPTER II.—*Rights and Liabilities of Landlords and Tenants.*

Section 5, referred to below, was agreed to—

Taken *verbatim* from section 16 of Act VIII (B.C.) of 1869, *i.e.*, dependent talookdar, &c., holding land at fixed rates since Permanent Settlement not liable to enhancement of rent.

Section 6, referred to below, was agreed to—

Taken *verbatim* from section 17, Act VIII of 1869. Rent of talookdars not changed for 20 years to be *primâ facie* evidence of occupancy at that rent since Permanent Settlement.

Section 7, quoted below, was agreed to—

Ryots who hold at fixed rates of rent, which shall not have been changed from the time of the Permanent Settlement, shall continue to hold at such rates; their tenures are heritable and transferable. Such ryots shall be called ryots at fixed rates.

Section 8, it was agreed that the second part, beginning with "the presumption," should be omitted (section as amended, referred to below, agreed to). The words which the Committee agreed to strike out are quoted below:—

Section amended taken *verbatim* from section 4 of Act VIII of 1869. The words which it was agreed to omit are—

"The presumption which in this section and section 6 arises from payment of rent at one uniform rate for 20 years is not rebutted by a tenant's omission to plead specially that he has held at the same rate from the time of the Permanent Settlement, nor by the production of a pottah dated subsequently to the Permanent Settlement, unless the tenant expressly admits that the tenancy or rate commenced from the date of such pottah."

Section 9, the section amended, as quoted below, was agreed to—

Every ryot who shall have cultivated or held land for a period of 12 years shall have a right of occupancy in the land so cultivated and held by him, whether he holds under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to *khamat, seer*, or *zerat* land belonging to the proprietor of the estate or tenure and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to land sublet for a term or year by year by a ryot having a right of occupancy, *nor to lands held by a tenant in lieu of wages.*

Every *resident* ryot shall be presumed to have a right of occupancy in all lands which he holds in that estate or village with deference to which he is a resident ryot. The holding of the father or other person from whom a ryot inherits shall be deemed to be the holding of the ryot within the meaning of this section.

Explanation II was amended by the addition of the following words: "Provided that the transferor holds at the time of transfer a registered pottah for the whole tenure so transferred." The explanation as amended would stand thus—"A right of occupancy is heritable: it is also transferable with all liabilities, provided that no decree is outstanding against the tenant for rent due; provided also, that the transferor had at the time of transfer a registered pottah for the whole tenure so transferred."—(*See* page 8, Head VI, *post.*)

Explanation III was agreed to as quoted below—

> The presumption created by this section in favour of a resident ryot may be rebutted in respect of any portion of his tenure by proof that such portion has been held for less than 12 years.

Explanation IV.—It was agreed that clause *(a)* be omitted. That clause *(b)* remain as in draft.

That *(c)* be amended as follows:—

(c)—Land recognised by village custom as the special holding of a co-sharer, or land recognised by village custom as the special holding of a co-sharer and treated as such in the distribution of profits or charges among the co-sharers. The explanation as amended, and quoted below, was agreed to—

> For the purposes of this section, *seer* or *zerat* or *khamat* or *nij jote* means—
>
> (*b*)—Land continuously cultivated for 12 years by the proprietor or co-sharer himself with his own stock, or by his servants, or by hired labour at his expense.
>
> (*c*)—Land recognised by villiage custom as the special holding of a co-sharer, or lands so recognised by villiage custom and treated as such in the distribution of profits and charges among the co-sharers.

Section 10 agreed to as quoted below—

> Ryots having rights of occupancy shall be called occupancy ryots, and all ryots of inferior legal status shall be called common ryots.

Section 11, as quoted below, was agreed to by a majority of the meeting—

> On the application of any ryot to have his class of tenure determined, the court shall determine the class to which he belongs, namely, whether he is a ryot at fixed rates or an occupancy ryot, resident or non-resident, or whether he is a common ryot.

Section 12, quoted below, was agreed to—

> The rent paid by an occupancy ryot shall not be liable to enhancement, except (*a*) by written agreement registered under the Indian Registration Act, 1877, or (*b*) by order under this Act.

Section 13 was agreed to after substituting for the words "in places adjacent" the words "in the same village or villages immediately adjoining that in which the land is situated," and omitting all that follows after the words "provided, however." The section as amended is quoted below—

> No occupancy ryot shall be liable to enhancement of rent previously paid by him, except on some one of the following grounds, namely, that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the same villiage or in any villiage having any part of its boundary common with the boundary of the village in which the land is situated. That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot. That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

The words which it was agreed to omit, beginning "provided, however," are also quoted below—

> "Provided, however,"—
>
> (1)—That when the rent is paid in money, the court shall in no case fix a rate in excess of one-sixth part of the value of the estimated average produce of the land;
>
> (2)—That the value of the produce shall be deemed to be the average price realizable for each kind of produce at the date of the instalment next following the time at which such produce is ordinarily reaped.

The President here invited suggestions for an easy and practicable way of enhancing rents. None were offered.

Section 14.—First part was agreed to. Second part was amended by the omission of the word "transferable" before interest, by the substitution of the words "to sue for enhancement of rent" of any ryot for "shall be entitled to enhancement of rent of any ryot," and by the omission of all that follows those words. The section thus amended and quoted below was agreed to—

> No co-sharer shall be entitled to enhance the rent of any ryot otherwise than through a manager authorized to collect the rents of the whole estate or revenue property on behalf of all the co-sharers in the same.

No landholder, not being a proprietor nor possessing a permanent interest in land, shall be entitled to sue for enhancement of rent of any ryot.

Section 15.—It was agreed that section 18 (*a*) of Mr. Finucane's draft Bill (quoted below) be substituted for this section—

Any rate of rent decreed after enhancement suit, and any measurement of land accepted by both parties, shall be binding on such parties for not less than 10 years, and shall not be liable to revision during that period.

Section 16, referred to below, was agreed to—

This section corresponds generally with section 19 of Act VIII of 1869.

Section 17.—It was agreed to substitute section 14 (amended) of Mr. Finucane's draft Bill for this section. This section thus amended is quoted below—

No under-tenant or ryot who holds or cultivates land without a written engagement, or under a written engagement not specifying the period of such engagement, or whose engagement has expired or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held or cultivated by him is situated, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall be served on such under-tenant or ryot specifying the rent to which he will be subject for the next ensuing year, the ground or grounds on which an enhancement of rent is claimed, and the particulars alleged in support of the same. The notice required under this section must be served at least six months before the date from which the enhancement is to take effect.

Such notice shall be served by the civil court in the same way as a summons under the Civil Procedure Code. The provisions of sections 72 to 92 of the Civil Procedure Code shall govern service of notice under this section.

Section 18.—It was agreed to omit this section.

This section, taken from section 20 of North-Western Provinces Act, was to the following effect:—

In determining the rate of rent payable by a ryot, his caste shall not be taken into consideration, unless it is proved that by the local custom caste is taken into account in determining such rate. And that whenever it is found by local custom or practice that any class of person, by reason of their having formerly been proprietors of the soil or of their being resident ryots or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.

Sections 19 *and* 20.—It was agreed to substitute section 14 (amended) of Mr. Finucane's draft Bill already quoted for these sections.

Section 21, taken *verbatim* from section 15 of Act VIII (B.C.) of 1869, omitting the explanation of Mr. Worsley's draft, was agreed to.

The second meeting of the Committee was held on Monday, the 11th November 1878.

PRESENT:

F. M. Halliday, Esq., *President.*	Babu Bemola Churn Bhuttacharjeea.
J. F. Browne, Esq.	„ Joy Prakash Lall.
C. F. Worsley, Esq.	„ Hurbuns Sahai.
T. M. Gibbon, Esq.	„ Bhoop Sen Singh.
G. Anderson, Esq.	G. Tynbee, Esq.
W. B. Hudson, Esq.	G. Hodgkinson, Esq.
D. Reid, Esq.	M. Finucane, Esq., C.S. *Secretary.*

Mr. Browne said that he thought, with the limited time at the disposal of the Committee, it would not be possible for them to continue the discussion, section by section, on Mr. Worsely's draft Bill. It would, he suggested, be better to take up *seriatim* the points indicated in paragraph 6 of the Government letter No. 2222, dated 7th September, as those at which it is proposed to improve the present law. Any member might offer such suggestions as he had to make under the various heads, and the Secretary of the Legislative Department, or the Secretary in communication with the Legislative Department, might afterwards draft a Bill embodying the suggestions which commended themselves to the Committee. Mr. Worsley having said that he had no objection to Mr. Browne's proposal, the Committee proceeded to discuss *seriatim* the points indicated in the Government letter. It was, however, understood that any question as to which the Committee had come to a conclusion at their first meeting should not be open to re-discussion, except with the special consent of the President, and, also, that the conclusions arrived at in the first meeting should be allowed to stand, unless specially modified by the subsequent resolutions of the Committee.

Head I.—Improvement of the System of Zemindari Accounts in connection with the Obligations imposed on Putwarees.

Under this head it was put to the Committee—

(*a*) Whether zemindars should be bound by law to file accounts annually in the Collector's office, or in such other public office as the Local Government may direct.

It was unanimously agreed that they should be so bound.

(*b*) It was next put to the Committee whether the accounts to be filed may be in any form as long as they embody a certain amount of information, or whether they should be confined to prescribed forms.

It was carried by a majority of ten to four that the accounts to be filed may be in any form, provided they contain not less than the following particulars:—

1. (1) The serial number of each ryot.
2. (2) The name of each ryot.
3. (3) The area of land held by each ryot, and of the portions thereof on which rent is payable in kind and cash, respectively.
4. (4) The details of each separate annual demand on each individual ryot, and the total thereof.

For—	*Against*—
President.	Mr. Browne.
Mr. Gibbon.	„ Worsley.
„ Anderson.	„ Hudson.
„ Reid.	Babu Bhoop Sen Singh.
„ Hodgkinson.	
„ Toynbee.	
„ Finucane.	
Babu Bemola Churn Bhuttacharjeea.	
„ Joy Prakash Lall.	
„ Hurbuns Sahai.	

(*c*) Mr. Browne proposed that a suit for rent shall not be entertained unless the plaintiff file with the plaint a deposit receipt (for the accounts which zemindars shall be bound to file in the Collector's or other office) showing that such accounts have been duly filed.

Mr. Gibbon proposed as an amendment that no suit for rent shall be entertained under the Landlord and Tenant Act unless the plaintiff file the deposit receipt for accounts required to be filed in the Collector's or other office, or unless he otherwise prove to the satisfaction of the court that he has so filed such accounts.

Mr. Gibbon's amendment was agreed to.

(*d*) Under the head of improvement in zemindari accounts it was proposed by Mr. Finucane that loose sheets of paper not being written in bound volumes shall not be admissible in evidence as books kept in the regular course of business in any suit under the Landlord and Tenant Act. Mr. Gibbon proposed as an amendment that copies of papers filed under the Landlord and Tenant Act in the Collector's office be admissible in evidence, whether written in bound volumes or not.

Mr. Gibbon's amendment was accepted as a rider to the original resolution.

Mr. Hodgkinson proposed that the proposal to exclude loose sheets of paper from evidence be rejected, and that there be substituted for it the following:—

"No accounts of the nature of those which zemindars shall be bound to file in the Collector's or other office shall be received in evidence unless they have been so filed."

Mr. Hodgkinson's amendment was then put to the vote and lost by a majority of 11 to 3.

For the amendment—	*Against*—
Mr. Hodgkinson.	Mr. F. M. Halliday.
Babu Hurbuns Sahai.	„ J. F. Browne.
„ Joy Prakash Lall.	„ C. F. Worsley.
	„ T. M. Gibbon.
	„ G. Anderson.
	„ B. Hudson.
	„ D. Reid.
	Babu Bemola Churn Bhuttacharjeea.
	„ Bhoop Sen Singh.
	Mr. G. Toynbee.
	„ M. Finucane.

The original resolution, with Mr. Gibbon's rider, was then declared carried by the same majority.

Head II.—The encouragement or rendering Compulsory of Pottahs and Kabooliyats.

Under this head it was put to the Committee—

(*a*) Whether the interchange of pottahs and kabooliyats should be rendered compulsory by law. It was carried by a majority of 12 to 2 that the interchange of pottahs and kabooliyats should not be rendered compulsory by law.

For rendering pottahs compulsory by law—
Mr. Reid.
Babu Bhoop Sen Singh.

Against—
Mr. Toynbee.
,, Browne.
,, Hudson.
,, Anderson.
,, Gibbon.
,, Worsley.
,, Hodgkinson.
,, Finucane.
The President.
Babu Hurbuns Sahai.
,, Joy Prakash Lall.
,, Bemola Churn Bhuttacharjeea.

(*b*) Mr. Finucane proposed that the interchange of "chittahs," "khatians" or abstracts of holdings and counterpart "chittahs," "khatians" or abstracts of holdings containing merely the areas of holdings, amounts of rents actually paid, and instalments thereof, and involving the determination of no question of right or status, should be made compulsory by law. It was carried by a majority of 12 to 2 that the interchange of "chittahs," "khatians," or memoranda of tenures, should not be made compulsory.

For rendering interchange of "chittahs" compulsory—
M. Finucane, Esq.
Babu Bemola Churn Bhuttacharjeea.

Against—
F. M. Halliday, Esq.
J. F. Browne, Esq.
C. F. Worsley, Esq.
T. M. Gibbon, Esq.
G. Anderson, Esq.
B. Hudson, Esq.
D. Reid, Esq.
Babu Joy Prakash Lall.
,, Hurbuns Sahai.
,, Bhoop Sen Singh.
G. Toynbee, Esq.
G. Hodgkinson, Esq.

(*c*) Mr. Browne proposed that whenever a court decrees rights of occupancy, it shall compel the interchange of pottahs and kabooliyats between the parties, specifying the boundaries of the fields in which such rights are decreed. Unanimously agreed to.

Head III.—To insist on the Use of Counterfoil Receipts.

The question was put to the Committee—

(*a*) Whether the use of counterfoil receipts should be insisted on. A majority (12 to 2) agreed that the use of counterfoil receipts should be insisted on.

For the compulsory use of counterfoil receipts—
F. M. Halliday, Esq.
J. F. Browne, Esq.
C. F. Worsley, Esq.
B. Hudson, Esq.
D. Reid, Esq.
Babu Bemola Churn Bhuttacharjeea.
,, Joy Prakash Lall.
,, Hurbuns Sahai.
,, Bhoop Sen Singh.
G. Toynbee, Esq.
G. Hodgkinson, Esq.
M. Finucane, Esq.

Against—
Mr. Gibbon.
,, Anderson.

(*b*) The Committee were next asked to determine the form of receipt to be used. It was agreed that the form proposed by Mr. Finucane should be adopted, after striking out the words "kist," "due on," and "putwaree."

The form adopted by the Committee is as follows :—

FORM ADOPTED BY THE COMMITTEE. COUNTERPART.

Tender of rent.	*Receipt of rent.*
No. mouza	No. mouza
Pergunnah zillah	Pergunnah zillah
Name of asami	Name of asami
Amount	Amount
By whom brought	By whom brought
On account of (*10) demand for	On account of demand for
Of year 187 .	Of year 187 .
Dated	Dated
Signature of ryot.	Signature of zemindar or agent.

ORIGINAL FORM PROPOSED. COUNTERPART.

Tender of rent.	*Receipt of rent.*
No. mouza	No. mouza
Pergunnah zillah	Pergunnah zillah
Name of asami	Name of asami
Amount	Amount
By whom brought	By whom brought
On account of annas kist of	On account of annas kist of
Demand for of year 187 .	Demand for of year 187 .
Due on day of 187 .	Due on day of 187 .
Dated	Dated
Signature of ryot.	Signature of zemindar or agent.
Signature of putwaree.	Signature of putwaree.

Head IV.—Cheapening for Registration.

It was unanimously agreed that registration expenses should be lessened. The President suggested that this might be done by allowing parties themselves to file copies of the documents to be registered, instead of having them copied in the Sub-Registrar's office. The suggestion was unanimously approved of.

The President next asked for an expression of opinion as to whether it was possible, with a view to cheapening registration, to adopt printed forms of pottahs and kabooliyats for each district, as suggested in the papers referred for the consideration of the Committee. It was unanimously agreed that such forms could not be adopted.

It was suggested by Mr. Browne that it would be advisable to allow Sub-Registrars to go into the mofussil to register documents without the issue of a commission, as required by the present registration law. The suggestion was approved of by the Committee.

Head V.—The Discouragement of the amalgamation of old and new Holdings.

The Committee was unanimously of opinion that it is not desirable to interfere with the amalgamation of holdings. In connection with this subject it was proposed by Mr. Finucane to add (*a*) a declaratory section in the present law to the effect that rent claimants are bound to ensure cultivators in peaceable possession of the whole of their holdings, undisturbed by force or show of force on the part of the rent claimant himself (or on the part of a paramount rent claimant, or on the part of any person claiming through them) throughout the period in respect of which rent is claimed;

(*b*) that failing, without sufficient cause, to ensure the cultivator in peaceable possession, the rent claimant should forfeit the rent of the entire holding if the cultivator's possession was disturbed in any part thereof by force or show of force on the part of the rent claimant himself, or on the part of any person claiming through or under him.

The Committee was of opinion that this was unnecessary.

Head VI.—Transferability of Occupancy Right.

(*1) A majority of the Committee was of opinion that it is not desirable to alter the existing law on this subject.

The third meeting of the Committee was held on Tuesday, 12th November, at Sonepore.

PRESENT:

1.—F. M. Halliday, Esq., *President.*
2.—J. F. Browne, Esq.
3.—C. F. Worsley, Esq.
4.—T. M. Gibbon, Esq.
5.—G. Anderson, Esq.
6.—B. Hudson, Esq.
7.—D. Reid, Esq.
8.—Babu Joy Prakash Lall.
9.— „ Hurbuns Sahai.
10.— „ Bhoop Sen Singh.
11.— „ Bemola Churn Bhuttacharjeea.
12.—G. Toynbee, Esq.
13.—G. J. S. Hodgkinson, Esq.
14.—M. Finucane, Esq., *Secretary.*

Before continuing the discussion on Head VI., Mr. Worsley proposed that section 27 of his draft Bill (quoted below) regarding the right of common ryots to receive pottahs for five years be adopted:

> (27)—Common ryots are entitled to receive leases for any term not exceeding five years at the rates hitherto paid by them, provided that no such ryot shall be entitled to receive second and successive leases at the rate hitherto paid by him until twelve months after the expiration of his last lease. If within such period the landlord shall not have ejected such ryot, or have obtained an order under this Act for the enhancement of his rent, or if the parties shall not have entered into a new engagement, such ryot shall be entitled to receive another lease for a term not exceeding five years at the rate hitherto paid by him. If the court in a suit for enhanced rent shall have declared a higher rate than that previously paid by him, such ryot shall be entitled to receive a lease for a term not exceeding five years at the said higher rate.

Mr. Browne proposed as an amendment that "no non-occupancy ryot shall be liable to enhancement of rent or to ejectment, except at intervals of five years, if he has built a house in the village or estate. At the end of every five years the landlord shall either eject the ryot or serve notice of enhancement which must not exceed one anna in the rupee every five years up to a term of 20 years. No ryot shall be allowed to contest an enhancement not exceeding that amount; but if he does not agree to the enhancement, he must vacate the land."

Mr. Hodgkinson proposed that the law regarding the right of non-occupancy ryots to pottahs, and their liability to enhancement of rent, be left as it is.

Mr. Hodgkinson's proposal was carried.

Mr. Gibbon proposed that every ryot be accorded the right to sublet the whole or any portion of his holding, provided that all arrears of rent are paid up in full, and that the due payment of the rent is secured to the zemindar.

Mr. Hodgkinson proposed as an amendment that the power to sublet be limited to occupancy ryots, and to non-occupancy ryots holding under a lease for the unexpired term thereof.

Mr. Gibbon accepted Mr. Hodgkinson's amendment, which was then put as a substantive resolution as follows :—

"That every ryot having a right of occupancy be accorded the power to sublet the whole or any portion of his holding, and that every non-occupancy ryot holding under a lease be accorded the power to sublet for the unexpired term of his lease the whole or any portion of his holding, provided that all arrears of rent are paid up in full, and that the due payment of the rent is secured to the zemindar." * (*See* Note 2.)

For the proposal—	*Against*—
Mr. Reid.	Mr. Toynbee.
„ Hodgkinson.	„ Browne.
„ Gibbon.	Babu Bhoop Sen Singh.
„ Anderson.	„ Hurbuns Sahai.
„ Worsley.	„ Bemola Churn Bhuttacharjeea.
„ Hudson.	„ Joy Prakash Lall.
„ Finucane.	
„ Halliday.	

PRESUMPTIONS IN FAVOUR OF RYOTS.

Mr. Worsley proposed that the definition of "resident ryot" in section 3, clause 6, of his draft Bill, and clause 2 of section 9, with Explanations III and IV, omitting clause (*a*), be accepted.

Mr. Finucane proposed as an amendment that the Committee adhere to the conclusion arrived at in their first meeting on this subject, namely, that the definition of zerat, khamar, nij jote, &c., be allowed to stand, and that section 6 (*b*) of his draft Bill, omitting the word *khoodkasht*, be substituted for section 9 of Mr. Worsley's Bill.

Mr. Worsley's proposal being in substance the same as Mr. Finucane's, the former gentleman withdrew his resolution in favour of the amendment, which was then put as a substantive resolution as follows :—

"That every resident ryot who has cultivated or held any land continuously for twelve years in any village or estate shall be presumed to have occupancy rights in the whole of the land which he occupies in that village or estate till the contrary is proved in respect of the whole holding or of each portion thereof."

Mr. Gibbon proposed as an amendment that "in the whole of the *ticca* land which he occupies" be substituted for "the whole of the land which he occupies."

For Mr. Gibbon's amendment—	*Against*—
Mr. Anderson.	Mr. Worsley.
„ Gibbon.	„ Hudson.
Babu Joy Prakash Lall.	„ Hodgkinson.
„ Hurbuns Sahai.	„ Reid.
	„ Toynbee.
	„ Browne.
	„ Finucane.
	„ Halliday.
	Babu Bemola Churn Bhuttacharjeea.
	„ Bhoop Sen Singh.

The amendment was declared lost.

The original resolution was then put to the vote—

For—	*Against*—
Mr. Worsley.	Mr. Anderson.
„ Hudson.	„ Gibbon.
„ Hodgkinson.	Babu Bemola Churn Bhuttacharjeea.
Babu Bhoop Sen Singh.	„ Joy Prakash Lall.
Mr. Browne.	„ Hurbuns Sahai.
„ Reid.	
„ Toynbee.	
„ Finucane.	
„ Halliday.	

The resolution was therefore carried.

Babus Joy Prakash Lall, Hurbuns Sahai, and Bemola Churn expressed their dissent from the principle of creating a presumption in any shape; Messrs. Gibbon and Anderson were willing to accept the presumption if limited to *ticca* lands.

Head VII.—To Simplify and Amend the Law of Distraint, and to make Illegal Distraint or Restraint of Crops specially punishable.

Mr. Browne proposed that distraint without suit be initiated in a court; that process of distraint be served through the zemindar's servants if he so wishes; that if the tenant object to the distraint on a one-anna stamp paper the landlord will have to sue him summarily and to apply simultaneously for attachment before judgment; that sales be conducted through the court peons or officers appointed for the purpose by the local Government; and that otherwise distraint before suit and claims to crops distrained be treated according to the general law in the same way as in case of attachment before judgment. Mr. Browne's view as to distraint, given in detail in his written opinion on the amendment of the rent law, are quoted below:—

1.—No right of distraint without suit can be exercised by co-sharers, except through a manager.

2.—No right of distraint without suit can be exercised by persons who should have been, but have not been, recorded in the Collector's registers under the Land Registration Act.

3.—All distraint without suit shall be initiated in the court by an application, and notice of demand accompanied by an extract from the rent-roll. Such notice may be served (through the court) by the landlord's servants, and distraint may be executed by the landlord, resistance being punished by the laws in force in the same way as resistance to the processes of the court.

4.—Claims made by third parties in distraints without suit to be treated under the general provisions of the law as in cases of claims against property attached before judgment, the claimant to pay an institution fee according to amount of rent claimed. The court to pass such orders as to giving security as it may think fit. The claimant must simultaneously apply for an attachment before judgment.

5.—When the tenant whose crops are distrained without suit contests the demand, he will be allowed to put in an objection on a one-anna stamp paper. A notice will then be issued on the landlord calling upon him to sue the tenant summarily, and to apply simultaneously for attachment of crops before judgment.

6.—The custody of the property distrained before suit or on attachment before judgment, and the sale thereof, to be regulated by the rules of the Civil Procedure Code; but the court should be bound to entrust the property to, or to carry out sales of crops (distrained by the landlord without suit or attached before judgment) through such officials either in the village or thana as the local Government may from time to time direct.

Mr. Hodgkinson proposed as an amendment that Mr. MacDonnell's draft sections quoted in paragraph 6 of Sir S. C. Bayley's note be substituted for the existing law of distraint, only substituting the words "canoongo or such other officer as the local Government may direct" for "putwaree;" also the words "three days" for "at the same time" in section 72, and omitting altogether section 75, which is noted below:—

* (Section 75).—Any distraint of crops in excess of the quantity specified in the notice of distraint shall subject the distrainer to the penalties provided for criminal tresspass or for theft, as the case may be, in the Indian Penal Code; and persons removing crops which have been lawfully distrained under the provisions of this Act, until such have been sold by the putwaree as aforesaid, shall be liable to the penalties provided for theft in the Indian Penal Code.

Mr. Gibbon proposed that the law of distraint be entirely abolished, and that the summary procedure suggested in the Bengal Bill for the more speedy realization of rents be adopted in its place.

The question was put to the vote whether, in case a summary procedure for realization of rents be extended to Behar, the power of distraint should be altogether abolished.—(*Vide* page 13, *post.*)

For the abolition of distraint—	*Against*—
Mr. Halliday.	Mr. Hodgkinson.
" Worsley.	Babu Joy Prakash Lall.
" Anderson.	" Hurbuns Sahai.
" Gibbon.	" Bhoop Sen Singh.
" Hudson.	
" Browne.	
" Reid.	
" Toynbee.	
" Finucane.	
Babu Bemola Churn Bhuttacharjeea.	

Head VIII.—To Limit the right to Enhance and make Illegal Enhancement punishable.

Mr. Gibbon proposed that all zemindars be accorded the power to enhance the rents of all ryots paying below the average rental of the pergunnah; that, having accorded the zemindar that right, the zemindar shall have no power to raise the rents of any resident ryot paying above the average rent of the pergunnah.

Mr. Hodgkinson proposed as an amendment that the Committee adhere to the restrictions on enhancement already agreed to by them—

For Mr. Hodgkinson's amendment—	*Against*—
Mr. Worsley.	Mr. Anderson.
„ Hudson.	„ Gibbon.
„ Hodgkinson.	
„ Reid.	
„ Browne.	
„ Toynbee.	
„ Finucane.	
„ Halliday.	
Babu Bemola Churn Bhuttacharjeea.	
„ Joy Prakash Lall.	
„ Bhoop Sen Singh.	
„ Hurbuns Sahai.	

Mr. Hodgkinson's amendment was declared carried.

Head IX.—To make the Demand of Illegal Cesses punishable.

Babu Bhoop Sen Singh proposed that the Collector be empowered to define what cesses are illegal.

Mr. Toynbee proposed as an amendment that Head IX be left alone, as being a question on which the Committee had no suggestions to offer.

Mr. Toynbee's amendment was carried, Babu Bhoop Sen Singh dissenting.

Head X.—To Recognise and Provide by Law for the System of Payment in Kind.

Mr. Worsley proposed that section 41 of his draft Bill, taken from the North-Western Provinces Rent Act (quoted below) be adopted—

> (41)—Whenever rent is taken by the division of the produce in kind or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the ryot and landholder either personally or by agent,—if either landholder or ryot, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,—an application may be presented by either party to the Collector, requesting that a proper officer be deputed to make the division, estimate, or appraisement. On receiving such application, the Collector shall issue a written notice to the opposite party or his agent to attend on the date and at the time specified in the notice, and shall depute an officer before whom such division, estimate or appraisement shall be made.
>
> If on or before the date appointed the dispute has not been amicably adjusted, three residents of the village shall be appointed assessors, one by each of the parties and one by the officer deputed to divide the grain or estimate or appraise the crops; and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops: provided that, if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.
>
> The officer deputed shall report his proceedings to the Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

Babu Bhoop Sen Singh proposed as a rider that it be provided that the *danabundi* papers be filed in the Collector's or other office prescribed by the local Government within 15 days of the "kankut" (appraisement), whether the assessment be made by the zemindar himself or through the Collector, as provided by Mr. Worsley's section 41.

Mr. Worsley's proposal, with Babu Bhoop Sen Singh's rider, was unanimously agreed to.

Mr. Hudson proposed that in cases in which the ryot allows bhaoli lands to be fallow, thereby depriving the landlord of any profits from such lands, the Collector or court be empowered to fix a money rent for such land.

Mr. Finucane proposed as an amendment that, in cases where the ryot, without due cause, allows bhaoli lands to be fallow, the landlord shall be entitled to a cash rent in respect of the period in which the land was fallow, such cash rent to be fixed by the court at a cash rate not exceeding that paid for the same description of land in the village or neighbourhood.

Amendment accepted by Mr. Hudson and carried.

The fourth meeting of the Committee was held at Sonepore on Wednesday, November 13th, 1878 :—

PRESENT :

F. M. Halliday, Esq., *President.*
T. M. Gibbon, Esq.
B. Hudson, Esq.
C. F. Worsley, Esq.
G. Anderson, Esq.
J. F. Browne, Esq.

Babu Bhoop Sen Singh.
„ Hurbuns Sahai.
„ Joy Prakash Lall.
G. J. S. Hodgkinson, Esq.
D. Reid, Esq.
G. Toynbee, Esq.

M. Finucane, Esq., *Secretary.*

Mr. Hodgkingson proposed that " where occupancy rights have been established, the occupancy ryot or zemindar shall be entitled to commute *bhaoli* into *nagdi* (cash) tenures at the rates paid by other occupancy ryots in the neighbourhood; where occupancy ryots holding *nagdi* (cash) tenures do not exist, that the ryot shall be liable to pay in money rent the average value of the zemindar's share of the produce, calculated on the outturn of the preceding five years."

Babu Bhoop Sen Singh proposed as an amendment that the principle of allowing *bhaoli* to be converted into *nagdi* tenures be rejected, and that the rules proposed by him in his written opinion on the amendment of the rent law be adopted.

The rules referred to are quoted below :—

(1)—The estimate of the produce of *bhaoli* lands shall be made by the *amlas* of the zemindar in the presence of the ryot and assessors, as mentioned in Mr. Worsley's draft Bill. The estimate and quantity of land shall be entered then and there in counterfoil books in the presence of the ryot and assessors. It shall be signed by the *putwaree*, the *gomashta*, and the assessors, and the duplicate form shall be similarly signed and attested and given to the ryot.

(2)—If the ryot do not agree to the estimate, he shall forthwith demand an *agora* (watchman) from the zemindar; and, if refused, he shall within a week from the date of the estimate apply on stamp paper to the Collector to obtain an order to have the crops reaped and apportioned without delay.

(3)—If the ryot shall fail to make an application as aforementioned, he shall be held bound to the estimate made in the manner prescribed by Rule 1.

(4)—In case of dispute as to partition of *bhaoli* crops, it shall be open to either party to make an application to the Collector to have the crops divided under the supervision of a proper officer.

(5)—That the application be on an eight-anna stamp paper.

(6)—That the Collector on receipt of such application shall depute a proper officer.

(7)—That such officer shall have the partition of crops made in his presence, and that he be liable to criminal prosecution for corruption.

(8)—That the costs be borne by the parties jointly.

(9)—That if the ryot remove *bhaoli* crop without permission of the zemindar, or before partition of the crops has been made, he should be held guilty of theft.

(10)—That any number of ryots be permitted to make a joint application for division of crops.

For Babu Bhoop Sen Singh's amendment the following gentlemen voted :—

For—	*Against—*
Babu Joy Prakash Lall.	Mr. Halliday.
„ Hurbuns Sahai.	„ Worsley.
„ Bhoop Sen Singh.	„ Hudson.
Mr. Gibbon.	„ Toynbee.
„ Anderson.	„ Reid.
	„ Hodgkinson.
	„ Browne.
	„ Finucane.
5	8

The amendment was declared lost.

The original resolution was then put—

For—	*Against—*
Mr. Halliday.	Babu Bhoop Sen Singh.
„ Worsley.	„ Jog Prakash Lall.
„ Hudson.	„ Hurbuns Sahai.
„ Toynbee.	Mr. Gibbon.
„ Reid.	„ Anderson.
„ Hodgkinson.	
„ Browne.	
„ Finucane.	
8	5

Messrs. Gibbon and Anderson dissent from the principle of converting bhaoli into nagdi tenures altogether.

Mr. Hodgkinson proposed, as a rider to his resolution, "that where the proportion of the produce to be taken by the zemindar is not specified in any written agreement, it shall be presumed that the zemindar is entitled to half and the ryot to half the gross produce."

Carried; Messrs. Gibbon and Anderson dissenting.

Head VII.—Distraint.

Mr. Hodgkinson proposed that "in the event of the proposal to abolish distraint and to substitute for it a summary procedure not meeting with the approval of Government, distraint be initiated in a court; that the zemindar shall make to the Collector or other court an application, which may be for the distraint of any number of ryots' crops residing in the same estate or village, showing the amount due from each ryot and the instalments in which the arrear is due; that the Collector shall thereupon make a summary order, a copy of which shall be given to the applicant for service."

Mr. Finucane proposed as an amendment that the following words be added:—"If any person, being empowered to distrain, shall distrain or sell, or cause to be sold, any property in a manner contrary to the provisions of the Landlord and Tenant Act, he shall be liable to the same penalty as is provided in section 99 of Act VIII of 1869 for illegal distraint on the part of a person not empowered to distrain."

For the amendment—	*Against—*
Mr. Gibbon.	Mr. Browne.
„ Hudson.	„ Reid.
„ Worsley.	„ Toynbee.
„ Halliday.	„ Hodgkinson.
„ Finucane.	Babu Bhoop Sen Singh.
„ Anderson.	„ Joy Prakash Lall.
	, Hurbuns Sahai.
6	7

The amendment was declared lost. The original proposition was then put, and declared carried by the same majority. The members who voted in favour of the amendment gave a qualified assent to Mr. Hodgkinson's proposal as being better than nothing, but still insufficient to prevent illegal distraint.

SUMMARY PROCEDURE.

The Committee next proceeded to consider what would be the best form of summary procedure for Behar, supposing the right of distraint abolished. The question was put—

1st.—As a summary procedure, whether the Bengal Bill be accepted in its entirety.

2nd.—Whether the Bengal Bill, with section 19 so far modified that the ryot can only be ejected at the end of the agricultural year, be accepted.

3rd.—Whether Mr. Browne's proposal for summary realization of rent, with a modified form of section 19 as given in Clause 2, be accepted.

Mr. Anderson voted for the Bengal Bill in its entirety. Mr. Gibbon for the Bengal Bill with section 19 modified.

The following gentlemen voted for Mr. Browne's proposal with a modified form of section 19 of the Bengal Bill added:—

Mr. Browne.
„ Toynbee.
„ Worsley.
„ Hudson.
„ Reid.
Mr. Hodgkinson.
„ Halliday.
„ Finucane.
Babu Joy Prakash Lall.
„ Bhoop Sen Singh.
Babu Bemola Churn Bhuttacharjeea.

Mr. Browne's proposals for summary realization of rent, as contained in his written opinion on the amendment of the rent law, are quoted below :—

(1)—Landlords should be allowed to sue summarily for arrears of rent of one year's standing or less, and such suits shall be entered in a register to be called a summary register; such summary suits may be instituted on payment of a fixed fee, the amount of which is to be determined by the Local Government.

(2)—If in such summary suit the tenant altogether denies the relationship of landlord and tenant, the suit shall be dismissed.

(3)—If in such suits tenancy is admitted, the tenant will not be allowed to raise any other plea than that of payment; and after deciding on that plea, the court shall pass orders of payment for amount admitted (if any) and for such amounts respecting which the plea of payment has been raised but not proved to the satisfaction of the court. The plaintiff will be left to sue for the balance of his claim (if any) by regular suit in the usual manner with the usual institution fee.

Section 19 of the Bengal Bill for the speedy realization of rents to be added, so far modified that no ryot be liable to ejectment except at the end of the agricultural year.

MISCELLANEOUS.

Mr. Hodgkinson proposed "that no zemindar shall be allowed to eject a tenant, except by order of a court."

Mr. Worsley proposed, as an amendment, that section 40 of his draft Bill, taken from the North-Western Provinces Act, quoted below, be accepted :—

Section 40.—If the landholder desire to eject a common ryot, or any other tenant holding only for a limited period after the determination of his tenancy, he may cause a written notice of ejectment to be served on such tenant, specifying the land from which the tenant is to be ejected, and informing him that he must vacate such land on or before the last day of the month of Jeyt next following: or that, if he means to contest the right to eject him, he must apply to the court for that purpose on or before that date.

The notice shall be written in the vernacular language and character of the district, and shall be issued and served on or before the first day of the month of Cheyt through the office of the Collector, and the landholder shall pay the cost of service. It shall be served in the manner prescribed by section 20.

The tenant on whom such notice has been served may, on or before the last day of the month of Jeyt next after the service, make an application to the court contesting his liability to be ejected.

When such an application is made, the court shall proceed to determine the question between the parties.

If no such application is made, the tenancy of the land in respect of which the notice has been served shall be held to cease on the last day of the month of Jeyt next after the service. The court, if necessary, shall enforce the ejectment:

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of a kind in which an advance has been made by the leaseholder, and the proprietor or landholder's right of re-entry at the end of the term is contingent on the payment of such advance either in money or by the usufruct of the land. In all such cases the landholder must proceed by suit in court.

Mr. Hodgkinson withdrew his resolution in favour of Mr. Worsley's amendment, which was then put as a substantive proposition and carried; Babu Hurbuns Sahai and Babu Joy Prakash Lall dissenting.

Mr. Worsley proposed that section 47 of his draft Bill, quoted below, be adopted with the addition—That the *hâth* be the standard of 18 inches :—

Section 47.—All measurements made under this Act shall be made according to the standard pole of the pergunnah in which the land is situated; and in case of dispute, the Collector shall determine what the standard (of each ?) pole is.

Mr. Gibbon suggested that for "standard pole of the pergunnah" be substituted "standard pole of the pergunnah or tuppah." Mr. Worsley accepted the suggestion. Section 47 of Mr. Worsley's Bill thus modified was unanimously agreed to.

Mr. Worsley then proposed that the principle involved in section 107 of his draft Bill, quoted below, be accepted :—

Section 107.—In every suit for the delivery of pottahs or kabuliyats, and for the determination of the rates of rent at which such pottahs or kabuliyats are to be delivered; in every suit for the recovery of damages on account of the illegal exaction of rent or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress; in every suit on

> account of the excessive demand of rent and in every suit for abatement of rent; in every suit for the recovery of arrears of rent; and in every suit for the determination of class of tenure,—any number of ryots or other tenants may be sued or may sue collectively; and it shall be no ground for dismissing or refusing to hear the application or plaint that such ryots or other tenants are wrongly joined as defendants or plaintiffs: provided that the suit by or against all the tenants be of the same nature, and be on account of lands situate in the same estate, or, where the estate consists of more than one village, in the same village, having one registered putwaree.

Mr. Toynbee proposed that the principle be rejected.

Mr. Toynbee's amendment was carried.

Mr. Reid proposed that the rules laid down in Mr. Worsley's draft Bill for compensation for improvements made by ryots be adopted, with one addition, relating to compensation for the value of trees planted by ryots. The zemindar or in-coming ryot should be made to purchase the original ryot's interest in the trees, or acknowledge the custom of the country which still prevails, *viz.*, that the planter of the trees and his heirs are entitled to one-half of the produce.

Mr. Finucane proposed that Mr. Worsley's sections, taken from the North-Western Provinces Act and quoted below, be adopted in their entirety:—

> *Section* 48.—If any ryot, or any person from whom he has inherited or purchased, make any such improvements on the land in his possession as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land without payment of compensation for such improvements.
>
> *Explanation.*—The word "improvements" as used in this section means works by which the annual letting value of the land has been, and at the time of demanding compensation continues to be, increased, and comprises—
>
> (*a*) tanks, wells, and other works for the storage, supply, or distribution of water for agricultural purposes;
> (*b*) works for the drainage of land, or for the protection of land from floods, or from erosion, or other damage by water;
> (*c*) the relaiming, clearing, or enclosing of lands for agricultural purposes;
> (*d*) the renewal or re-construction of any of the foregoing works or alterations therein or additions thereto.
>
> *Section* 49.—Such compensation may, at the option of the landholder or his representative, be made—
>
> 1*st*, by payment in money;
> 2*nd*, by a rent to be charged on the land;
> 3*rd*, by the grant of a beneficial lease of the landholder or his representative to the ryot or his representative;
> 4*th*, partly by one or by any two of the said ways, and partly by the others, or other of the same ways.
>
> *Section* 50.—In case of difference as to the amount or value of the compensation tendered, either party may apply to the Collector stating the matter in dispute and requesting a determination thereof. On receiving such application, the Collector shall—
>
> (*a*) cause notice thereof to be served on the other party;
> (*b*) take such evidence as the parties, or either of them, may adduce;
> (*c*) make such further enquiry as a Collector may deem necessary; and
> (*d*) determine the amount of the payment in money and the amount and incidence of the rent charge, and the terms of the lease, or any of such matters.
>
> *Section* 51.—In determining the amount or value mentioned in section 50, or the terms of such leases, the Collector shall take into account any assistance given to the ryot by the landholder, either directly in money, material, or labour for the purpose of making such improvements, or indirectly by allowing the ryot to hold at a favourable rate of rent.

Mr. Gibbon proposed that "no compensation for improvements be given."

The question was then put to the vote, whether compensation for improvements should, under any circumstances, be allowed—

Against allowing compensation for improvements—	*For* allowing compensation for improvements—
Mr. Gibbon.	Mr. Reid.
" Browne.	" Toynbee.
" Anderson.	" Hudson.
Babu Bhoop Sen Singh.	" Worsley.
" Hurbuns Sahai.	" Hodgkinson.
" Joy Prakash Lall.	" Finucane.
	" Halliday.
6	7

Mr. Gibbon's amendment was declared lost.

Mr. Hodgkinson then proposed that compensation for improvements be confined to cases where advances had been made under the Land Improvement Act.

Mr. Worsley accepted Mr. Hodgkinson's proposal, which was carried. The gentlemen, who voted against compensation for improvements altogether, prefer Mr. Hodgkinson's limitation to Mr. Worsley's original proposal, but would rather have no compensation allowed in any case.—(*Vide* Note 3.)

HEAD XII.—*The empowering Collectors to effect a Settlement in Disputed Cases.*

Mr. Toynbee proposed that "the Committee consider any special measures under this head to be uncalled for in Behar."

The proposal was carried, Babus Joy Prakash Lall and Hurbuns Sahai dissenting, and Mr. Finucane expressing a qualified dissent.

Mr. Finucane proposed that re-measurement of estates or tenures be not allowed oftener than once in ten years, and only by a person, or body of persons representing the entire proprietary interest.

Mr. Gibbon proposed as a rider, except where a measurement having been made by one co-sharer another co-sharer disputes its accuracy, through the court, within six months of the measurement.

The original resolution, with Mr. Gibbon's rider, was unanimously agreed to.

Mr. Finucane proposed that in cases where the parties have not entered into a special agreement in writing, fixing the kists in which rent is to be paid, the Collector be empowered to fix and declare for each district, or part of a district, the instalments in which rent shall be payable.

Agreed to unanimously.

Mr. Finucane proposed that "where there is a dispute between rival rent claimants as to which of them is entitled to the whole or any part of the rent of a ryot's holding, and such ryot, after claim made upon him, is doubtful as to which of the rival claimants is entitled to the rent or any quota thereof, he shall be entitled to deposit his rent in the court having jurisdiction to entertain a suit for such rent to the credit of the rival claimants. That such deposit shall have, as far as the ryot is concerned, the same force and effect as if the ryot had paid the amount deposited to the person or persons legally entitled thereto.

Carried unanimously.

Mr. Finucane proposed that, where a village or estate has been leased in farm, the lessor shall be bound to notify to the ryots the conditions and terms of the lease by affixing a copy of it in the village cutcherry and also by beat of drum in the village.

The Committee was of opinion that this was unnecessary.

Mr. Finucane suggested that the provisions of the North-Western Provinces law, sections 23 to 35, Act XIX of 1873, relating to putwarees and canoongoes be extended to Behar. These sections are quoted below:—

> *Section* 23.—The Collector of the district, with the sanction of the Board, may arrange all the villages of such district in putwaree's circles, and may from time to time alter the limits of such circles.
>
> But no such arrangement or alteration shall be final unless and until it has been sanctioned by the Board.
>
> *Section* 24.—A putwaree shall be appointed to each circle, whether the mehals in such circle are assessed to revenue or not.
>
> *Section* 25.—Whenever a circle is without a putwaree, the proprietors of such circle, or their representatives in interest, shall, in accordance with local custom, nominate a person to be such putwaree, and he shall be appointed by the Collector of the district.
>
> *Section* 26.—In case of disagreement as to the nominee, the Collector shall ascertain the local custom, if any, and shall appoint the person nominated in accordance therewith.
>
> Where no such custom can be ascertained, the Collector shall appoint the nominee of those proprietors who represent the largest amount of annual value in the circle or of their representatives in interest.
>
> If a mehal is held under direct management, or if the proprietor of a mehal be under the charge of the Court of Wards, the Collector of the district shall be held to be the proprietor for the purpose of nominating a putwaree under this section.

Section 27.—If the person in whom the nomination is vested neglect to nominate a successor to the putwaree within fifteen days from the occurrence of the vacancy, the Collector of the district shall call on them by notice to make the nomination; and if they fail to do so within fifteen days from the receipt of notice, the Collector of the district shall make the appointment.

Section 28.—If the person or persons in whom the nomination is vested nominate a man not qualified to perform the duties of a putwaree, or in the nomination neglect to follow the local custom, the Collector of the district shall refuse to appoint the nominee; and if a fit person be not nominated within fifteen days from the date of the notification of such refusal, he shall himself appoint a person to the vacant office:

Provided that the Collector of the district, in making the appointment under this and the last preceding section, shall always give preference to any member of the late putwaree's family qualified to perform the duties of the office.

Section 29.—A rate may be imposed by order of the Collector of the district on the annual value, or on the cultivated area, of all the mehals composing the circle of each putwaree, or partly in one way and partly in the other, for defraying the salary of such putwaree, and any charges incurred on account of any additional establishment required for the proper supervision, maintenance and correction of the putwaree's records.

Section 30.—The amount of the rate to be imposed under section 29 in any district shall be determined by the Board under the orders of the local Government:

Provided that such rate shall not exceed 3 per cent. on the annual value of the rated mehal (in Behar three pie per rupee on the jummabundee).

Section 31.—The rate shall be collected with the revenue, and shall, in cases of default, be recoverable by the same process as arrears of revenue.

Section 32.—The salaries of the putwarees shall from time to time be fixed by the Board under the orders of the local Government.

Section 33.—One or more canoongoes may be appointed in each tehsil (thana) for the proper supervision, maintenance and correction of the putwaree's records.

In cases of a vacancy in the office of a canoongo, preference shall be given to some duly qualified member of a family in which the office of the canoongo of the tehsil or any part thereof is hereditary.

If no such qualified member can be found, then one of the putwarees of the tehsil shall, if duly qualified, be appointed to the vacancy; and failing any person duly qualified among them, some other fit and competent person shall be appointed thereto.

Section 34.—The salaries of the canoongoes shall from time to time be fixed by the local Government.

Section 35.—Every canoongo and putwaree, and every person appointed temporarily to discharge the duties of any such officer, shall be deemed to be a public servant within the meaning of the Indian Penal Code, and all official records and papers kept by any such officer shall be held to be public records and the property of Government—*Vide* Note 20, Part I.

The Committee seemed to be of opinion that it was desirable to abolish putwarees altogether, but no definite conclusion on this point was arrived at.

The President next asked the Committee for an expression of opinion as to the means by which the extra establishment required for the decision of summary suits, for the enforcement of legal distraint, for the division and appraisement of the produce in *bhaoli* tenures, for the custody of accounts to be filed in the Collector's office, and for the carrying out of their other recommendations is to be paid.

On this point Mr. Hodgkinson proposed that "the Committee is of opinion that the receipts from stamps in summary suits and copies, and from registration fees, will suffice for the extra establishment required."

Mr. Hodgkinson's resolution was put and carried.

Mr. Finucane proposed that, with a view to paying the extra establishment required for the enforcement of legal distraint, and for carrying out the other recommendations of the Committee—

(*a*) applications for distraint should bear court fees as in a civil suit, such fees to be assessed on double the amount of the arrear which it is sought to recover by distraint;

(*b*) that applications for service of notice of enhancement bear court fees calculated on the capitalized value of the proposed enhancement.

These proposals were not approved by the Committee.

Note (1*).—In a circular letter dated 29th January 1879 the president invited a further expression of opinion on the following points:—

(*a*) Are occupancy rights to be transferable, provided the transferee is a *bonâ fide* cultivator?

(*b*) Should sub-letting (which was proposed as a substitute for the transferability of occupancy rights) be allowed?

(*c*) Should compensation for improvements be allowed in all cases, or only where improvements are made under the Land Improvement Act?

In reply to the president's letter, the following members have expressed opinions in favour of the transferability of occupancy rights, as long as there is no decree outstanding for rent, and without any restrictions as to the status or class of transferees :—

Mr. Worsley. | Mr. Hudson.
„ Reid. | „ Finucane.

The following members are in favour of the transferability of occupancy rights, provided the transferee is a *bona fide* cultivator :—

Babu Bemola Churn Bhuttacharjeea. | Babu Bhoop Sen Singh.

The other members are opposed to transferability of occupancy rights.

Note (2*).—Messrs. Worsley and Finucane would only allow sub-letting in case the transferability of occupancy rights is not recognised specifically by law. Messrs. Reid and Hudson would adhere to the present law, allowing sub-letting whether occupancy rights are declared transferable or not.

Note (3*).—In reply to the president's No. 382, dated 29th January, the members named below have expressed opinions in favour of allowing compensation for improvements in all cases, and not alone where the improvement has been made under the Land Improvement Act :—

Mr. Worsley. | Mr. Reid.
„ Hudson. | „ Finucane.
Babu Bemola Churn Bhuttacharjeea.

The president is also in favour of allowing compensation for improvements in all cases.

M. FINUCANE,
Secretary.

No. 120, dated Bankipore, the 18th February 1879.

From—J. F. Browne, Esq., *Member, Behar Rent Law Committee.*

To—*The Commissioner of the Patna Division and President of the Committee.*

I have the honour to submit the following remarks with reference to your letter forwarding to me for signature the draft report of the Behar Rent Committee.

Head I.

Putwarees.—I think it might be mentioned with advantage under this head that putwarees could be altogether done away with if Moonsiffs were appointed in each thana with powers both to try simple money suits and summary rent suits. I pointed out that the whole expense of such Moonsiffs could be defrayed from the proceeds of fees payable in the proposed rent-roll offices for the filing of accounts and from usual court fees. Distraints and sales would be carried out as at present by peons, but with this difference that such officers would be under much closer and nearer supervision than they are at present. The thana Moonsiff would be very much in the position of a North-West Tehsildar. The issues before him for decision would be always of a simple character, and he would therefore have ample time to superintend the execution of revenue processes.

Head IX.

It appears to me that courts should be distinctly prohibited from admitting plaints in which any mention is made of any cess of any sort or kind. Ignorant peasants will never believe that such cesses are illegal when courts can be compelled to decree them on the specious ground that they have been agreed to by the tenant.

Head X.

Under this head I wish to place on record my opinion that the system of rent in kind must, as long as it continues to exist, be most detrimental to the interests of the ryots. Its practical result is that the landlord, whenever there is any harvest, obtains such an exorbitant proportion of the produce that the tenant must always be a pauper. Of course, when there is no harvest the tenant pays nothing, but no more in most cases does the nagdi or money-rent tenant.

Of course the bhaoli system could not be abolished by one stroke of the pen, but I think that it might easily be seriously discouraged. I would throw on the landlord, in all cases in which he had not attached the crops before reaping, the burden of proving that their value exceeded the amount of cash rent paid in the same or adjoining districts by occupancy ryots. I would allow bhaoli ryots to commute on the same principle, and not only at rates in the neighbourhood, for in many districts, *e.g.*, Gya, there are no occupancy ryots. I would not allow the landlord to recover through the courts anything else except the exact half of the produce, and no expenses or cesses of any kind. Such steps would, I think, gradually lead to the substitution of money rents for rents in kind.

Head XIII.

I would add at the end of section 28 another provision—

5.—That when a ryot tenders rent in a suit, the plaintiff's pleader should be bound at once to receive it and give a counterfoil receipt. This arrangement is vastly preferable to the present very cumbersome system of deposits.

2. I shall now proceed to answer the questions *a*, *b*, *c*, of your section 3.

(*a*)—I am decidedly of opinion that in Behar it would be premature at present to give special legal sanction to the transfer of occupancy rights. In most of the districts the ryots have no such rights, or, I should rather say, these rights do not admit of legal proof. When they have been properly defined by gradual litigation, and connected with specific lands by the action of the proposal made by me in section 8 (*a*) of this report, the occupancy tenures must become transferable in the natural course of events precisely in the same manner as the guzáshta tenures of Shahabad. If they do not, it will then be time enough to declare them transferable. To do so now would amount to giving great and dangerous encouragement to false claims on the part of ryots. They will be induced to claim as occupancy lands the whole of the lands in their possession, although it is notorious that only a very small proportion thereof has been held for twelve years continuously.

With reference to the proviso suggested in the question, I am of opinion that the determination of the point whether the transferee is a *bonâ fide* cultivator would be attended with insuperable difficulties.

(*b*)—I do not think that sub-letting by occupancy ryots should at this juncture be formally sanctioned by a special law. It would, in cases in which the sub-lessee is a *bonâ fide* cultivator, lead to the very worst kind of rack-renting by a host of intermediate holders of the most needy and greedy description. When the sub-lessee is not a cultivator, he would be either a mahajun, a land-jobber, or a planter. I think it most desirable that such complications should be avoided at a time when we are seeking to improve the relations between landlords and tenants, and to improve the status of the latter. Good feeling should be encouraged as much as possible between landlords and those ryots who may succeed by the help of the proposed presumptions in their favour in securing occupancy rights; the very contrary result will take place if it is declared by law that those who secure occupancy rights will be allowed to sub-let their lands to others at higher rates than those paid to the landlord, or to make over their tenures to powerful outsiders with a view to their acting as patrons and friends of the ryots against the landlord.

(*c*)—The discussion of the question of compensation seems to me quite premature, and should, in my opinion, be postponed to the time when tenants will be in a position to improve their tenures by the expenditure of capital. The paucity of such tenants in most of the districts of Behar at the present time is notorious.

3. I now return the report signed, on the understanding that the few amendments proposed by me will be incorporated in the report or sent up as my own suggestions.

Dated Chumparun, the 22nd February 1879.

From—T. M. GIBBON, Esq., *Member, Behar Rent Law Committee.*

To—The Commissioner of the Patna Division and President of the Committee.

I HOPE I may be allowed to say a few words in continuation of my letter of the 19th instant. I have only just seen, through the kindness of a friend, a copy of the memorial presented by the members of the Behar Landholders' Association to His Honour the Lieutenant-Governor.

In it there is one assertion of such importance as made by them, and at the same time partly so incorrect, that I hope you will pardon my drawing your attention to it. In section 10 of their memorial, the memorialists assert that "right of occupancy is heritable;" it is so, but only to a very limited extent, and not as the momorialists are under the impression that it is in the widest sense of the word.

One of the points that we were asked to discuss, and a very important one, was whether it was advisable to make rights of occupancy "inheritable and transferable."

Whether the right is to be made inheritable and transferable, or only inheritable or transferable, or neither, the law should be clearly defined, and not left in its present vague state.

To allow an assertion, backed by the names of all the principal zemindars in Behar, to pass unquestioned, particularly on a matter which concerns the custom, might mislead His Honour's Government into the belief that it was correct, and accept it as such without investigation. To make the occupancy rights of ryots inheritable in the general acceptation of the term, would affect the interests of the landholders to a greater degree than to accord to them the right to transfer their holdings.

As I said before, I see nothing to clash with the interests of the landholders in according the ryots the right to transfer their rights, provided they are not allowed to part with their lands piece-meal, but to make them inheritable—I believe a very serious matter.

Section 6 of Act VIII of 1869 says—"The holding of the father or other person from whom a ryot inherits shall be deemed to be the holding of the ryot within the meaning of this section."

This does not, in my opinion, make a ryot's holding inheritable, but simply allows a ryot who has been permitted by his landlord to get possession of his father's farm to count the time his father held such lands in his own favour.

As I said in my letter of the 24th October, custom permits lands held by a joint family to be inheritable, but only among the members of a "joint" family, and as long as they form a "joint" family, that is to say, as long as two or three members of a family live together, it does not matter in whose name the jummabundee stands; if the party whose name is on the rent-roll dies, it makes no difference to the rest of the family; the family still remains in possession.

A man cannot claim to inherit the lands of a relation from whom he has been separated some years; his right to inherit even ancestral property in such a case would very, very seldom be allowed, and certainly never in the case of lands his relative might have acquired after their separation.

Whether such right is to be allowed in the future is a matter for the Government to decide; if it is to be granted, it will be necessary, in the interests of the zemindars, to put some limit to the time within which such claim is to be made, or we shall have fifth and sixth cousins turning up to claim lands already settled with others.

In reference to another matter, which I hope you will pardon my again referring to, its importance to us all must be my excuse.

Both before and at your meeting I strongly protested against ryots acquiring rights of occupancy in bhaoli lands, and pointed out that it was contrary to custom. I now beg to refer you to section 6 of Act VIII of 1869 to show you that it is also contrary to the present law. "Khamar" ryot, according to Wilson's Glossary of Indian Law-terms, means "a cultivator who pays his rent in kind or in a certain share of the produce."

Dated Chumparun, the 19th February 1879.

From—T. M. GIBBON, Esq., *Member, Behar Rent Law Committee.*

To—The Commissioner of the Patna Division and President of the Committee.

I HAVE the honour to acknowledge the receipt of your circular No. 332 R. of the 29th January, requesting me to record the points on which I dissent from the findings of your Committee, and for a statement of the grounds on which I do so.

Under Head II, section 8 (*a*).—Although I quite agree with the recommendation made by Mr. Browne, that the courts should be empowered to compel the interchange of pottahs and kabuliyats in all cases where rights of occupancy have been decreed, I am of opinion the courts should also be empowered to fix the term for which, and the terms on which, the ryot is to hold such lands.

If the courts are not empowered to do so, the power to declare that the ryot has occupancy rights in his lands will be valueless.

Head III.—In reference to the compulsory use of counterfoil receipts, I cannot hope that the objections urged by Mr. Anderson and myself will have any weight as against the strongly-expressed opinions of such a large majority of your Committee in favour of the measure; but I am sorry to say I see no reasons assigned for doing so of sufficient weight, to induce me to re-consider my opinion, or to withdraw my objections to it. My objections to the measure are stated by me in my letter of the 24th October. I do not think the members of your Committee have fully considered the necessity the Judges will be under of giving decrees against ryots on the production of the counterfoil, even though their better judgment leads them to suspect foul play.

If the production of the counterfoil is not to be final in a suit, the compulsory use of them will be a decided nuisance.

If (as I hope it will) the Government will take measures to compel the keeping of proper accounts, &c., in accordance with the recommendation of your Committee, I would recommend the *seahas* being kept in counterfoil. I am sure you will find them better checks, and not so onerous. If a zemindar has previously made up his mind to swindle an unsuspecting ryot, no checks Government may contrive will prevent him from doing so. Where the ryot suspects foul play, and demands a receipt that the zemindar is disinclined to give, it is as easy and just as effectual for the ryot to apply for a receipt in the usual form, as it is for him to apply to the courts for one in counterfoil. These, I maintain, are not the cases requiring protection, or that the Judges have such difficulty in deciding.

The ryots will, in most cases, I may say in all, demand receipt immediately they pay their rents from the party to whom they pay their rents, whether collector, putwari, or zemindar; but if they are at the time of payment put off with any excuse, such as press of work, &c., provided they see the amount duly entered on the *seaha*, they will go away satisfied and not think of demanding a receipt for the amount paid until months after.

These are the men I would wish to see protected, and this can only be done, as recommended, by insisting on the *seahas* being kept in counterfoil.

I maintain that in most cases where the landlords have denied in our courts having received rents that have been paid to them, at the time of receiving such rent they had not the remotest intention of acting dishonestly by their ryots. To many everything is fair in law; both parties acting carelessly, but in good faith, as long as they have no dispute pending, think it no degradation to act unscrupulously when once an appeal has been made to law.

Head V, section 15.—I was not present on the first day of your meeting, so I hope I may be permitted to add the words "or by his representative" to your definition of zerat lands.

A man may be ticcadar of a village for fifty years, and during that time have cultivated lands as zerat, and yet he is not a proprietor, co-sharer, or servant.

Head V, section 17.—I am now as strongly averse to the principle of compensation for improvements being admitted as I was at the meeting of your Committee. It is a decided innovation, not required by the people, contrary to the practice of the country, and is sure to be misunderstood.

I am afraid public opinion is not sufficiently advanced to put the same construction on the word "improvement" that many of us would do.

Many cases of great hardship to the zemindar might occur were the principle allowed in the case of a poor zemindar and a wealthy tenant; for instance, a wealthy tenant might think it necessary to excavate a tank, expending Rs. 5,000 on it, and yet you would only allow the zemindar to dispossess him for the non-payment of his rent, say Rs. 10, on his paying down that sum.

I cannot see any hardship adduced in justification of the measure in the ryot having to pay ground-rent for a tank he thinks it necessary to excavate, or in his being obliged to keep it clean. In fact, I am not quite sure that more public officers than zemindars do not insist on the fulfilment of this last clause. It is certainly a hardship to the ryot to be compelled to pay ground-rent and be derived of the fish. A ryot receives his lands at the hands of the zemindar to farm, and thereby to support himself and family; if a ryot has, under the law, acquired a permanent interest in the soil, he can only be dispossessed for not fulfilling his part of the contract, namely, to pay the zemindar his rent if he makes improvements to facilitate his farming operations. He knows at what risk and on what terms, and should be prepared to pay the penalty of non-fulfilment of contract.

He is at liberty to make any improvements he thinks necessary or required on his own farm, but he has no right to constitute himself the judge of the public wants, to mulct the zemindar in the cost of the same thereafter.

Head VI refers to the advisability of making occupancy rights inheritable and transferable.

It not because I object to the resolutions of your Committee that I again refer to the subject, but because one of my objections to making them transferable has been fairly met by your able Secretary, and demands an answer.

One of my reasons for objecting to the ryots being accorded the right to transfer their occupancy rights in the soil was, as stated in my letter of the 24th October, and to your Committee, that their lands would soon pass from them into the hands of money-lenders and others.

To this it is replied that, by enhancing the value of the ryot's holding, you raise his credit and enable him to raise money on more favourable terms than he is now able to do.

This I admit to be correct in principle. By according him the right to transfer his holding you accord to him proprietary rights in the soil, and do most materially improve the value of his property, and will, after the lapse of time, enable those who may be fortunate enough to retain possession of their lands to raise money on more advantageous terms than they are now able to do.

But such a result will only come about after some years have elapsed when the ryot appreciates his position. You cannot, with the stroke of your pen, alter the terms on which he has hitherto borrowed money, and will for years to come do so. Anything you can do for him will not make him more provident for the future, or relieve him from his present burden of debt.

At present the money-lenders, knowing the ryots' lands are not saleable, feel that their only chance of realizing their claims is to support them and keep them alive. If you make occupancy rights transferable, you deprive such ryots of their only means of support.

In my letter of the 24th October I stated that I would make one exception to this rule, and that is to allow a sale by decree of court for arrears of rent. I have no arguments to bring forward in favour of such exceptions being made. When I come to analyse my own thoughts on the subject, I believe I am mainly guided by the great loss I have seen the much-abused ticcadars suffer by being deprived of their leases, and consequent difficulty they have in collecting their just dues.

Head VIII.—To limit the right to enhance, &c.

I believe clause (*b*) of section 21 will be found inoperative, and always evaded. As the recommendations of the Committee now stand, I have no very great objections to make to them.

At the meeting of your Committee I strongly objected to any preference being shown to one set of ryots over another; and far from agreeing with your Committee that any proposition to allow zemindars to raise all rents below the average of the pergunnah to such average was an innovation, I am strongly of opinion that the innovation was on the other side.

Before the passing of Act X of 1859 "no" ryots had the right to hold at fixed rates; and I am strongly of opinion that by granting them such right the Legislature of the day did the zemindars a positive injury, one contrary to the interests of the country.

I cannot hope that Mr. Anderson's and my opinions will carry much weight as against the opinions of such a strong majority, but I beg respectfully to protest against the word "rates" being used; if a ryot is to be allowed to hold his lands on the same conditions for all time to come, I beg it may be stated that he may hold his lands "on the same terms," not "at the same rate." As your Committee propose to word the law, a ryot might claim to hold his land at the same rate, but under different conditions.

Head X.—I am averse to allowing zemindar or ryot to convert bhaoli into nugdi tenures at pleasure. Bhaoli lands pay rent in kind, according to their yield: all lands do not yield equally well. Your proposal, as it now stands, would permit ryots to claim a right to hold especially good lands, or even fair average lands, at a lower rental than they are now paying. Bhaoli lands pay rent in proportion to the yield of each field; nugdi according to the average value of a jote. They should not, therefore, be classed together.

Should Government think it necessary to permit zemindars and ryots the option of converting bhaoli into nugdi tenure, I prefer the average produce of the last five years being taken as the basis of settlement, to the average rates paid by occupancy ryots in the neighbourhood.

Head XI.—A summary procedure.

My reason for preferring the Bengal Act to Mr. Browne's procedure was that the former left it at the discretion of the court to allow or disallow a defence; whereas by the procedure proposed by Mr. Browne, a ryot has only to set up a false defence to compel the zemindar to appeal to the slow and tedious process of a civil suit to receive redress.

Dated Arrah, the 22nd February 1879.

From—BABOO HURBUNS SAHAI, *Member, Behar Rent Law Committee,*

To—The Commissioner of the Patna Division and President of the Committee.

WITH reference to your circular No. 382 R., dated 29th ultimo, I have the honour to state that I generally assent to the proposed report of the Behar Rent Law Committee, and beg to offer the following remarks in connection therewith.

I am very strongly of opinion that a mere right of occupancy, which is a creation of Act X of 1859 and Act VIII of 1869, should not be declared transferable. I have to refer you to my previous report on the subject, which I submitted to you in the beginning of November last, for the reasons of the position I maintain.

The transferability of guzáshta tenures in Shahabad was recognized before Act X of 1859 came into force according to local custom and usage, but a guzáshta tenure is a quite different thing from a mere right of occupancy. The former, strictly and properly speaking, means a hereditary tenure held by a khoodkasht resident ryot from the time of the permanent settlement, or at least from a very ancient date, at a fixed uniform rate. Though, latterly, in some cases attempt has been made to make guzáshtadari and occupancy rights synonymous terms, yet, whenever proper objection has been made, and the case has been thoroughly sifted and carefully tried by the court, the attempt has failed.

In Behar, where the Mitakshara law prevails, the transfer of a right of occupancy which has been inherited by a son from his father would be invalid, unless with the consent of all the members composing the joint Hindu family. As a general rule, the Hindu family consists of minors or other male members who are unwilling to assent to the transfer, and as a logical consequence the recognition of the transferability of the right of occupancy, instead of conducing to the general prosperity of the agricultural population, will lead to litigation and ruin.

In Shahabad already a large portion of the old guzáshtadari tenures have passed into the hands of mahajans and indigo-planters in the same manner as the zemindaries of old families have passed into the hands of baniahs and mahajans, and consequently I cannot agree to the remark made in the report of the Committee that "the effect has not been to throw ryots' lands into the hands of mahajans or other monied men, nor have any difficulties arisen in connection with the Hindu law of inheritance."

Another danger which, in the interests of the agricultural population, I humbly beg to point out is that one of the consequences of the recognition of transfer of a right of occupancy will be that the best lands will pass away from the hands of ryots into those of indigo-planters, and thus the tenantry will be reduced to ruin and misery.

There is no objection, in my humble opinion, in according the power of sub-letting their holdings to the occupancy ryots, but I would most emphatically beg to state that the zemindar should not be bound to recognize the sub-tenure. The proviso in the resolution of the Committee about the due payment of rent to the zemindar is vague and indefinite. The question simply to be determined is—To whom is the zemindar to look for the payment of his rent? Surely he cannot be compelled to look to the under-tenants for the same. The zemindar at the time of the creation of the tenure selected his own peaceful ryot, and equity as well as law cannot compel him to recognize an obnoxious or a poor person who may be introduced by his ryot in his estate.

Many perplexing and difficult questions will arise if the zemindar be compelled to recognize the sub-tenant. Supposing he is a man of straw and the rent cannot be realized from him, is the tenant lessor jointly responsible with his sub-tenant for the rent or not? Supposing that the original tenant dies without leaving any heir (under the present law the tenure would lapse to the zemindar), can the zemindar, under such circumstances, oust the sub-tenant, though there may be no default in the payment of the rent? The zemindar has created the tenure for the cultivation of food-grain, can he be bound to recognize an indigo-planter whom his refractory ryot may happen to sub-let to, and who has cultivated indigo much to the annoyance and inconvenience of himself and tenants at large? The sub-tenant will be at liberty to grow whatever crop he may like, and the zemindar may not be able to distrain the crop which the under-tenant may grow. I am therefore strongly of opinion that the zemindar should not be compelled to recognize the sub-tenant.

The other point on which I beg to enter my emphatic protest is the proposal to abolish the distraint law altogether. The Committee was called upon by Government to consider and suggest how to simplify and amend the law of distraint. The majority of the Committee, instead of carrying out the instructions of Government, propose to abolish it altogether. It has been declared, from the earliest legislation to the present time, that the produce of the land is hypothecated for the rent, and the zemindar has legal right to realize his rent by distraining the crop. No good and valid reasons have been shown, nor has any grave necessity been made out, why the zemindar should be deprived of his vested right which he has hitherto enjoyed. It has been said that the power has been abused by him, but this fact is no reason why the law should be altogether abolished. If the present law be inadequate for protecting the ryot's interests and punishing the zemindar for abusing the power vested in him, surely the law should be improved, and effectual provisions ought to be made to remedy the evil. Almost all the laws are abused by some one or other, but that is no reason why the law should be dispensed with. I would therefore differ from the majority of the Committee in abolishing the law of distraint, and recommend the law should be improved as suggested by the Committee.

In my humble opinion no summary procedure for the realization of rent is required in Behar. The Bengal Bill as well as Mr. Browne's proposal will not materially assist the zemindar, and are open to grave objections. The present law, in my humble opinion, is quite sufficient so far as Behar is concerned, and no fresh legislation is necessary.

Compensation for improvement should be allowed only when the improvement is made under the Land Improvement Act. No doubt the ryot is equitably entitled to recover compensation for every sort of improvement which enhances the letting value of the land; but, in my humble opinion, there ought to be some restriction to the power of the ryot to make the improvement, and some provision ought to be made to keep reliable record to determine the amount of compensation to save protracted lengthy enquiries and litigation. As much difficulty will be experienced in carrying out the above scheme, I would propose that for the present compensation be allowed in cases of improvements made under the Land Improvement Act.

Dated Doomraon, the 1st March 1879.

From—BABOO JOY PRAKASH LALL, *Member, Behar Rent Law Committee.*

To—The Commissioner of the Patna Division and President of the Committee.

I HAVE the honour to acknowledge the receipt of your circular No. 382 L., dated the 29th January 1879, with enclosures, and to submit the following in reply.

2. *Head II, paragraph* 9.—I beg to dissent from this proposal on the following grounds:—

1st—Chittas containing the areas of fields, rates actually paid, amounts of rent, and instalments thereof, are in fact pottahs in miniature, and their compulsory interchange involves as much difficulty as the interchange of pottahs and kabuliyats.

2nd.—On precisely the same grounds that a law requiring compulsory exchange of pottahs and kabuliyats will have the effect of driving the parties to litigation, the compulsory interchange of chittas and khattians will inevitably lead to the same result.

3rd.—If it is only intended that a chitta not agreed to by the ryot, and not signed by him, is to be tendered by the zemindar, it would serve no purpose whatever; and if it be intended to bind the zemindar on his part, the ryot can do so by taking a copy of the jummabundee which the zemindar files in the Collectorate. If, however, it be intended to give a reciprocity to these chittas, in short, the probative force of a mutual contract, the chittas are nothing less than pottahs as has been submitted above.

4th.—In the present state of things, in the absence of a cadastral survey, it is very difficult to give the precise boundaries of a ryot's holding, and this difficulty is the same with regard to chittas as with pottahs.

5th.—It is respectfully submitted that the Committee, in negativing the proposal for the compulsory interchange of pottahs and kabuliyats, should not, for like reasons, recommend the compulsory interchange of chittas.

3. *Head V, paragraph* 15.—I respectfully dissent from the proposed definition of *zerat* lands. Cases of forcible ouster noticed by Sir Steuart Bayley, and exchange of ryotti for *zerat* lands, are, according to the opinion of the Committee, of rare occurrence in Behar, and such cases, involving as they do cases of forcible ouster, are, according to the opinion of the Committe, sufficiently provided for by the present law; under the circumstances, the definition is unnecessary. It is not also justifiable as regards the actual state of things and existing rights of zemindars, for there are cases in which, for good reasons, the zemindars do not cultivate the *zerat* lands themselves, or cannot do so. Nor is it easy to see how the definition obviates the difficulty noticed by Sir Steuart Bayley; for in cases of forcible ouster, and the ryot's seeking the assistance of courts, the ryot's case will stand or fall by *proof of his own right*. In the North-Western Provinces rent law, *zerat* lands have been so defined, more with a view to the protection of Government interests than with the view of protecting the ryots. This reason does not exist in Bengal.

4. *Head V, paragraph* 17.—I humbly dissent generally from the proposal of awarding compensation—

First, because this jeopardizes the landlord's right of re-entry;

Secondly, because it will lead to litigation;

Thirdly, because such improvements are, as a matter of fact, scarcely made by tenants-at-will, because their tenancy is precarious, and also because they want the means to make such improvements, and the consequence of the enactment will only be that the tenant will set up absurd claims for compensation as an answer to the landlord's right of re-entry.

These objections may not, of course, be applicable to cases where the improvements have been made after an inquiry or with the landlord's consent under the Land Improvement Act.

5. *Head VI, paragraph* 18.—I hold, as I held in Committee, that the interest of the landlord and tenant will be alike affected by making rights of occupancy under the rent law transferable. I do not see how the matter is any way improved by making occupancy rights transferable in a restricted sense (*i.e.*) to a *bonâ fide* cultivator. The object of such restriction is, perhaps, to keep away mahajans, ticcadars and indigo-planters from buying; but, in Behar, all these classes cultivate on their own account.

The proposed transferability of the right of occupancy created by Act X of 1859 will be considered by the zemindars as further encroachment on their rights, and at the same time it will not be so beneficial to the ryots, inasmuch as their lands will pass into the hands of monied men, such as usurers or indigo-planters.

A misunderstanding of the character of the guzáshta tenures of Shahabad seems the cause of many influential authorities recommending the transferability of occupancy rights in Behar. The guzáshta tenure had been recognized by custom and local usage in Northern Shahabad long before the date of Act X of 1859 came into operation, while the right of occupancy came to exist with the promulgation of the Act. The mere right of occupancy is not thus possessed of the necessary substance that enabled guzáshta tenures to find a consideration and regard with the landlords of higher rank. Inheritance of tenures held by khoodkhasht (resident) ryots from a very ancient date contemporary with the commencement of the permanent settlement at a fixed uniform rate, is a qualification wanting in the mere right of occupancy of the present day. All attempts at the promotion of occupancy right to the rank of a guzáshtadar tenure have met with failures wherever judicial courts have taken up the careful sifting of the question on proper objections advanced against such an undue recognition. In face of the authority of the Mitakchara law that commands such an extensive and deep-cherished respect of the Hindu families in the province of Behar, no recognition of the transferability is likely to take place without a lengthy and expensive litigation leading to no good to the ryot. Existence of numerous instances carrying testimony to the fact of actual transfer of guzáshtadari tenures from the possession of men devoted to land cultivation to that of men of professionally carrying on money transactions, called usurers, can be proved.

As to the question of sub-letting, I am still strongly of opinion that the law should be left as it is. If the zemindar be bound to recognize such sub-leases, there is not much difference between transfer by sub-lease and transfer by sale. The result under both conditions will be alike injurious to the zemindars. They cannot of course object to the law as it exists at present, allowing a ryot of occupancy right to cultivate himself or left others to cultivate under him. The evils of sub-infeudation have already been discussed under the Bengal Rent Bill.

The difficulty of the zemindars in matters of realization of rents will increase, because the ryots selected by them before Act X of 1859 came into operation, or at the time of the temporary settlement as peaceful tenants may change hands by bringing an obnoxious or too poor sub-tenant. In case of the tenant's dying without an heir, which empowers the zemindar to resume the lands, he may find difficulty in ousting the sub-tenant whom he has already been recognizing.

6. *Head VII, paragraphs* 19 *and* 20.—I beg to dissent from the proposal of the Committee that distraint should be abolished altogether or initiated in a court of justice. The power of distraint is only efficacious because at present the initiative is in the zemindar's own hands, and in order to take that initiative he has not to resort to a distraint court. The existence of the right in such form serves the purpose of inducing the ryot in many cases to pay his rents promptly. In Behar the right is but scarcely exercised: witness the paucity of distraint cases in courts.

The right to act promptly gives whatever advantage the zemindar enjoys under this power, and the delay that would result from the new provisions makes the right of no value. Under the proposal, distraint is attachment on application to court, thus giving the ryot full opportunity of removing his crops before the attachment order can reach the village. The produce of the land has always been considered to be hypothecated in the rent; the abolition of the power of distraint will therefore seriously affect the interests of the zemindars, and no summary procedure can afford any similar facility. Promptitude, which is so essential in all pecuniary transactions, is equally necessary in the realization of rent.

7. *Head VIII, paragraph* 21.—To sub-clauses (*a*) and (*b*) of clause (*a*) I would add the following sub-clause (*c*), "or on proof of payment of enhanced rate of rent by production of counterfoils for the preceding years." I hold sub-clause (*a*) alone not sufficient. In cases when the enhancement has been agreed to by the ryot, and payment of rent made by him at enhanced rates, there does not appear to be any reason why the proof of the fact of such payment for the preceding year shall not entitle the zemindar to a decree for enhanced rate of rent for subsequent years. In many cases it will be very troublesome and expensive to the parties to have their written engagements registered under the Registration Act.

With reference to clause (*b*), it would be hard to deny the right to enhance to parties to whom the land with all interest has been transferred for a term of years by the person having a permanent interest, such as mortgagees and lessees. The reason of the rule is served by providing thus—(*b*) "that enhancement shall not be allowed, except with the *consent* of a person having a permanent interest in the land," &c.

With reference to clause (*k*), I am of opinion that it would be better to leave the phrase "adjacent places" undefined, as it would enable the court to decide rate questions agreeably to the just requirement of each particular case.

I would remark on this head that, whilst seeking to limit the right of enhancement, regard should be had to the fact that the value of money has decreased and that of land produce increased in these days of scarcity and exportation, whilst the rates of rent sought to be enhanced were fixed 12 years ago on the current value of money and grain.

8. *Head XI, paragraph* 26.—I respectfully beg to submit that neither the Bengal Bill nor Mr. Browne's proposal will facilitate realization of rent. My objections are these: *first*, the procedure on comparison with the present will be found not more calculated for despatch of business. *Secondly*, Mr. Browne's procedure is not, of course, liable to objection on this score, but it makes the zemindars undergo the expenses of two suts in place of one. The troubles and expense involved in this will scarcely be compensated by the little expedition (perhaps nominal) gained with respect to arrears of undisputed rates. The zemindars of the North-Western Provinces have not so severe a law for the recovery of arrears of Government revenue, nor are their tenants so better-off as in Behar; still there is section 35 of the North-Western Provinces Rent Act XVIII of 1873, as an object of terror for the defaulting ryots.

9. *Head XIII, paragraph* 28, *clause* 2.—There does not appear to be any reason why the landlord or his representatives should be debarred from the right of measuring the lands excepting at the end of 10 years. It will be found that 10 years is a very long period in case of alluvion and diluvion, Bal or Panchait lands, or lands held under bhaoli tenures, which require yearly measurement.

Clause 4.—I dissent from the recommendations contained herein. It would be practically placing the landlords at the mercy of their ryots. Some party, whether rightly or wrongly, must be always in possession, and the ryots are bound to pay him rent. By such payment they are also exonerated for all time to come, and the rightful claimant can only recover mesne profits from the party in possession to whom the ryots have paid. A dispute as regards the zemindari title is thus never prejudicial to the ryot's interest; it is sometimes advantageous to him. Greater indulgence is not required to be shown to him by the necessities of the case. It is positively mischievous with respect to the zemindars, for, under this proposal, even in case of secure possession, the ryots, specially the inimically inclined or gained over by the zemindar's enemies, may trump out a dispute and cease to pay rent under the protection of law, thus possibly bringing on a sale of the zemindar's property and his ultimate ruin.

In conclusion, I beg leave to state that the present time is inopportune for new legislative action for landlord and tenant. No radical alteration in the substantive law is needed. The abuses that are represented to exist are the result of want of knowledge in the tenantry; but then, it has been admitted by competent authority that the tenantry of Behar are awakening to a knowledge of their rights; with the spread of this knowledge the existing law is sufficient to protect the interests of both parties, and the abuses complained of will find check in administrative reform in the improvement of the putwaree's as well as the zemindar's accounts, and in the increase of the strength of the existing machinery of justice. From the papers before the Commission. and from my own experience, I can say that Shahabad tenants, from their daring and turbulent habits, have wrested from their landlords more rights and advantages than the law had conferred upon them. In most instances the zemindars have suffered from the energetic combined resistance arising from the village commission system which prevails among the tenants of the Rajpoot and Brahmin castes in the district.

A
BILL
TO

Amend the law relating to the recovery of Rent in the Province of Behar.

Whereas it is expedient to amend the provisions of the Rent Law in the Province of Behar relative to the rights of ryots with respect to the delivery of pottahs and the occupancy of land; to the prevention of illegal exaction and extortion in connection with demands of rent; and to other questions connected with the same; to provide a summary procedure for the trial of certain classes of cases; to extend the jurisdiction of Collectors; and to amend the law relating to distraint: It is enacted as follows:

CHAPTER I.—Preliminary.

1. This Act may be called "The Behar Rent Act, 1879;" and it shall take effect in the Province of Behar from the date which the Lieutenant-Governor of Bengal shall fix by an order published in the *Calcutta Gazette.*

2. When, and so soon, as this Act shall commence and take effect "The Landlord and Tenant Procedure Act, 1869," shall cease to have operation or effect in the Province of Behar, save so far as it repeals or modifies any other Regulations or Acts, and save so far as regards suits or proceedings which before the time of the commencement of this Act shall have been instituted before any Court.

3. In this Act, unless there be something repugnant in the subject or context—

(1) "Province of Behar" means all the districts of the Patna Division, and includes any district or districts in the Bhagulpore Division to which the Lieutenant-Governor of Bengal may, by notification in the *Calcutta Gazette*, be pleased to extend this Act:

(2) "Rent" means whatever is to be paid, delivered or rendered by a tenant on account of his holding, use or occupation of land:

(2) This definition is taken from section 3, clause 2, of the North-Western Provinces Rent Act XVIII of 1873.

(3) "Proprietor" means a person or body of persons being in possession of an estate or revenue-free property as owner or owners thereof;

(3) This definition for the most part corresponds to that given in section 3, clause (8) of the land Registration Act, 1876; but the latter has been altered so as to exclude a sharer in a joint undivided estate.

(4) "Co-sharer" means any person being in possession of an undivided share in an estate or revenue-free property as owner thereof:

(5) "Landholder" means the person to whom a tenant is liable to pay rent* and includes a sharer or body of sharers being in possession of separate lands held in severalty, or of certain specific mouzahs or lands forming part of an estate or revenue-free property, under such circumstances as are described in sections 12 and 9 (*b*) of "The Estates Partition Act, 1876," and section 11 of Act XI of 1859:

(5) This definion which is taken from the North-Western Provinces Act, section 3, clause (3), seems preferable to the definition in Baboo Kristodas Pal's Bill, which would include an unrecorded proprietor (*vide* section 78 of Land Registration Act).

* So far as his relations with tenants are concerned, such a sharer is to all intents and purposes a 16-anna proprietor.

(6) "Resident-ryot" means a cultivator whose homestead is situated in the same estate or village in which he holds lands and, whose father or other relative, from whom he has inherited, resided and held land in the said same estate or village: provided that the aggregate period for which such ryot and his father, or such ryot and his other relative aforesaid, may have so resided and held land shall have been not less than twelve years:

(6) It is necessary to use both words "estate" and "village" in this definition, because in some districts estates are much larger than villages, while in others, owing to the effects of the Butwarra Law, estates are being daily sub-divided, and a village often contains twenty separate estates.

(7) "Non-resident ryot" means a cultivator who holds land in an estate or village other than that in which his homestead is situated:

(8) "Month" means a month of the Fusli year:

(9) "Year" means the Fusli year:

(10) "The Court" means the Civil Court having jurisdiction in any suit or matter:

4. In the construction of this Act the word "Collector" shall include a Deputy Collector in charge of a sub-division, or other officer exercising the powers of a Collector of a district, or of a Deputy Collector in charge of a sub-division, by whatever designation such officer may be called.

4. Taken *verbatim* from section 1 of Act VIII (B.C.) of 1869.

CHAPTER II.—Rights and Liabilities of Landholders and Tenants.

5. No dependent talookdar or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the ryot, who holds his talook or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in section 51, Regulation VIII of 1793, or in any other law to the contrary notwithstanding.

5. Taken from section 16 of Act VIII (B.C.) of 1869.

6. Whenever in any suit under this Act, it shall be proved that the rent at which a talook or other tenure is held has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such talook or tenure has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period.

6. Taken from section 17 of Act VIII (B.C.) of 1869.

7. Ryots who hold lands at fixed rates of rent, which shall have not been changed from the time of the permanent settlement, shall continue to hold at such rates. Such ryots shall be called "ryots at fixed rates." Their tenures are heritable and transferable.

7. Taken generally from section 3 of Act VIII (B.C.) of 1869. The right "to receive pottahs at those rates" may be more appropriately declared under the heading of "Leases."

8. Whenever in any suit under this Act, it shall be proved that the rent at which land is held by a ryot has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

The presumption which in this section and section 6 arises from payment of rent at one uniform rate for twenty years is not rebutted by a tenant's omission to plead specially that he has held at the same rate from the time of the permanent settlement, nor by the production of a pottah dated subsequently to the permanent settlement, unless the tenant expressly admits that the tenancy or rate commenced from the date of such pottah.

8. The first clause of this section is taken from section 4 of Act VIII (B.C.) of 1869. The second clause is new, and its enactment is rendered necessary by certain rulings of the High Court, which are injurious to the interests of ignorant tenants.

9. Every ryot who shall have cultivated or held land for a period of twelve years shall have a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to "*seer*" or "*zerat*" land belonging to the proprietor of the estate or tenure, and let by him on lease for a term, or year by year, nor (as respects the actual cultivator) in land sublet for a term, or year by year, by a ryot having a right of occupancy, nor to lands held by a tenant in lieu of wages.

9. The provisions of this section are taken partly from section 6 of Act VIII (B.C.) of 1869, partly from section 8 of the North-Western Provinces Act, and in other respects they are new. "Zerat" lands in North Behar are so widely different from the original "nij-jote" and other private lands "appropriated by zemindars to the subsistence of themselves and families" (*vide* section 39 of Regulation VIII of 1793), and the extension of "zerat" lands is a matter of such easy accomplishment in many estates that it seems necessary to define them for the purpose of this section with some precision. It is inexpedient that land which to-day is "ASSAMEEWAR" should to-morrow be recognized as "ZERAT" over which a right of occupancy could never be acquired by any ryot. The definition of "zerat" is taken

mainly from the North-Western Provinces Act, the words "last partition of the estate" in clause (*a*) having been substituted for "the last settlement of the district." Clause (*b*) will prevent "RYOTTI" lands which have been or may be converted into "ZERAT" by temporary lease-holders from being recognized as "SEER" lands over which the acquisition of a right of occupancy is prohibited by law.

The clause respecting resident ryots is strongly approved by Sir S. Bayley and Mr. Secretary Mackenzie, and to show that my view of a resident ryot's rights is by no means unreasonable, I may quote the opinion of the late Legal Remembrancer, Mr. H. Bell. In page 16 of his edition of the "Law of Landlord and Tenant," Mr. Bell observes as follows:—"It is generally assumed that a ryot must have been in possession of his holding for twelve years to acquire a right of occupancy. This, I think, is a very doubtful proposition. There is no magic in the number twelve; and it is submitted that a "khoodkast" ryot, who settles and builds his house upon the land, possesses from the commencement of his tenancy a right of occupancy in it. The law merely says that a ryot who has held land for twelve years shall have a right of occupancy in the land; but it does not say that a ryot who has not held for twelve years shall not have a right of occupancy."

Every resident ryot shall be presumed to have a right of occupancy in all land which he holds in that estate or village with reference to which he is a resident ryot.

Explanation I.—The holding of the father or other person from whom a ryot inherits shall be deemed to be the holding of the ryot within the meaning of this section.

Explanation II.—A right of occupancy is heritable, and, so long as no decree is outstanding against the tenant for rent due on account of such tenure, it is also transferable with all liabilities.

Explanation III.—The presumption created by this section in favour of a resident ryot may be rebutted in respect of any portion of his tenure by proof that such portion has been held for less than twelve years.

Explanation IV.—For the purposes of this section "*seer*" or "*zerat*" land means—

(*a*) land recorded as "*seer*" or "*zerat*" at the last partition of the estate in which it is situate and continuously so recorded since;

(*b*) land continuously cultivated for twelve years by the proprietor or co-sharer himself with his own stock, or by his servants, or by hired labour;

(*c*) land recognized by village custom as the special holding of a co-sharer and treated as such in the distribution of profits or charges among the co-sharers.

10. The nomenclature in this section and section 6 is borrowed from the North-Western Provinces Act so far as regards the two higer classes of ryots. The term "common ryots" is suggested as preferable to "tenants-at-will," which latter expression is not suitable to ryots whom this Bill entitles to receive pottahs for five years. For brevity's sake some short distinguishing names are required.

10. Ryots having a right of occupancy shall be called "occupancy ryots," and all ryots of inferior legal status shall be called "common ryots."

11. This section, which is taken generally from the North-Western Provinces Act, is much needed. There are times when a ryot may be in a peculiarly favourable position for proving a right of occupancy, and of which he should be entitled to take advantage.

It is also desirable that every reasonable facility should be afforded to a ryot of getting his class of tenure determined once for all. Moreover, as a proprietor by section 38 of Act VIII (B.C.) of 1869 and by section 44 of this Bill can cause the Collector "to ascertain, determine and record" tenures and under-tenures, and rates of rent, it is only reasonable that ryots should enjoy a corresponding privilege.

11. On the application of any ryot to have his class of tenure determined, the Court shall determine the class to which he belongs, namely,

whether he is a ryot at fixed rates,
or an occupancy ryot, resident or non-resident,
or whether he is a common ryot.

12. This section contains so much of section 12 of the North-Western Provinces Act as seems applicable to Behar.

12. The rent paid by an occupancy ryot shall not be liable to enhancement, except—

(*a*) by a written agreement registered under "The Indian Registration Act, 1877;" or

(*b*) by order under this Act.

13. Taken from section 18 of Act VIII (B.C.) of 1869.

13. No occupancy ryot shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely,—

that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent;

that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot;

that the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him:

This proviso is new. Under the present law there is no criterion by which "fair and equitable rates" can be ascertained. Pergunnah rates, to which "khoodkast" ryots were entitled to appeal under

Provided however (1) that when the rent is paid in money the Court shall in no case *fix* a rate in excess of one-sixth part of the value of the estimated average produce of the land; and (2) that the value of the produce shall be deemed to be the average price realizable for each kind of produce at the date of the instalment next following the time at which such produce is ordinarily reaped.

14. No co-sharer shall be entitled to enhance the rent of any ryot otherwise than through a manager authorised to collect the rents of the whole estate or revenue-property on behalf of all the co-sharers in the same.

No landholder, not being a proprietor nor possessing a permanent transferable interest in land, shall be entitled to enhance the rent of any ryot without the special sanction of the proprietor or his representative. Such sanction shall be accorded by a duly registered power-of-attorney, which may authorise the landholdor to take such legal steps as he may think proper for enhancing the rents of particular ryots of one estate or village named therein within six months from the date of its execution: Provided that no agreement made at any time between a proprietor or his representative and such landholder, whereby the former may bind himself to authorise future enhancements of rent, whether conditionally or unconditionally, shall be enforceable in any Court, and that breach of the same shall not constitute cause for any action whatsoever.

15. The rent of an occupancy ryot shall not be liable to be enhanced or abated at any time during the continuance of such ryot's lease, nor, when such ryot holds land without a written engagement, until the expiration of ten years from the date on which his rent was last fixed or enhanced.

16. Subject to the provisions of section 15 of this Act, every occupancy ryot shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot, or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

17. Applications for enhancement or abatement of rent must be made in or before the month of Jeyt next before the year commencing on the first day of the month of Assin from which the rent is to be enhanced or abated,

and all orders for enhancement or abatement shall take effect from the first day of the month of Assin next following the date of the application.

18. In determining, under this chapter, the rate of rent payable by any ryot, his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining such rate;

the early Regulations, have never been determined and recorded, and it seems necessary to propose something in their place. The provision in the North-Western Provinces Act (section 14) that the rent of an ex-proprietary tenant (a species of occupancy ryot) shall be four annas in the rupee below the prevailing rate paid by tenants-at-will, seems objectionable in principle, as it subjects the former, though in a slightly modified degree, to the competition and rack-renting endured by ryots of far inferior status. By limiting the landholder's demand to one-sixth of the value of the produce, we shall give him a direct interest in making improvements, and shall at the same time partially revive the ancient principle, according to which one-sixth of the produce was ordinarily taken by the sovereign (*vide* Mill's History of India, Vol. I, page 205, Wilson's edition). Where occupancy ryots are already paying more than such proportion as rent, the Court should be bound to recognise the rate, and such ryots should not be entitled to claim any abatement under this section. I would merely prohibit the Courts from fixing or enhancing the rent of an occupancy ryot above one-sixth part of the value of the produce. In this district the Government (on the average) receives from the zemindars only one-sixth part of what they collect as rent from ryots.

14. This provision is analogous to the proviso in section 68 of Act VIII (B.C.) of 1869. It seems desirable to restrict individual action on the part of a co-sharer in every legitimate way.

The second clause is new, and is designed to remedy the evil pointed out by Mr. Molony, who, in the 18th paragraph of his note, suggested that "it would be a desirable improvement in the law if the power of enhancement was altogether withdrawn from ticcadars and others holding only a temporary interest in the land." The suggestion is strongly approved by Sir S. Bayley (*vide* paragraphs 32 and 33 of his note), but it seems to me that some modification of the proposal is required in the interests of zemindars. It is generally agreed that the present system of short leases in Behar ought to be replaced by one of long leases, but such a change is not likely to be promoted by a provision which absolutely prohibits the enhancement of rents during the currency of a ticcádar's lease. It must not be forgotten that under ticcadars holding for 20 years or upwards without the power of enhancing rents, ryots will become entitled to the presumption created by section 8. For my own part I should like to see zemindars prohibited from temporarily leasing their rights or anything except specific lands.

15. This provision is approved by Mr. Dampier (*vide* paragraph 11 of his note). It is also partly supported by sections 16 (*a*) and 22 of the North-Western Provinces Act, and by section 9 of Act VIII (B.C.) of 1869, which last allows the Court, in case of disagreement between a landholder and tenant, to grant a pottah for a term not exceeding ten years.

16. This section corresponds generally to section 19 of Act VIII (B.C.) of 1869.

17. This section is taken, *mutatis mutandis*, from section 19 of the North-Western Provinces Act.

18. This section is taken for the most part from section 20 of the North-Western Provinces Act.

and whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil, or of their being resident ryots or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.

19. This section is partly taken from section 14 of Act VIII (B.C.) of 1869, but the last clause of it is new and should be read with section 27 under the head of "Leases."

19. No common ryot who holds land under a written engagement for a specified term shall be liable to an enhancement of rent during the continuace of such engagement; and no common ryot who has held land without a written engagement for more than twelve months otherwise than under the circumstances described in section 27, or under a written engagement not specifying the period of such engagement, or whose engagement has expired or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held by him is situate, shall be liable to pay any higher rent or rate for such land than the rent or rate payable for the previous year, unless a written notice shall have been served on such ryot in or before the month of Jeyt, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed.

In the case of a common ryot who has previously held land under a written engagement for a specified term, and whose engagement has expired by effluxion of time, the notice for enhancement of rent shall be served at any time within the six months next following the date of expiration of the said engagement; and the enhanced rent if agreed to by the ryot or sanctioned by the Court, shall be deemed to have become payable on account of the instalment next following the date of the service of such notice.

20. This section corresponds generally to the latter half of section 14 of Act VIII (B.C.) of 1869.

20. Such notice shall be served by order of the Collector in whose jurisdiction the lands are situate, on the application (which may be on plain paper) of the proprietor or other empowered person; and shall, if practicable, be served personally upon the ryot. If for any reason the notice cannot be served personally upon the ryot, it shall be affixed at his usual place of residence; or, if he have no such place of residence in the district in which the land is situate, the mode of service of such notice thall be by affixing it at the malcutcherry of such land or other conspicuous place thereon, or at the village chowri or chowpal, or at some other conspicuous place in the village in which the land is situate.

21. This section is taken from section 15 of Act VIII (B.C.) of 1869.

21. Any ryot on whom such notice as aforesaid has been served may contest his liability to pay the enhanced rent demanded of him, either by complaint of excessive demand of rent, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent.

This EXPLNATION embodies some remarks made by Sir B. Peacock, *C. J.*, in case Bakranath Mundle, I. B. L. R. (F. B.), 25. Though I rather dislike leaving it to the Civil Courts to act on their own discretion in such a matter, I do not see what other course can be adopted, unless the provisions applicable to occupancy ryots in respect of enhancement are extended to common ryots with some such modifications as these, namely,—

(1) when rent is paid in kind, the Court shall in no case FIX a proportion in excess of one-half of the produce;

(2) when rent is paid in money, the Court shall in no case FIX the amount in excess of one-fourth of the value of the estimated average produce.

"FIX" is used here in the same sense as in section 13.

Explanation.—As the rent even of a common ryot cannot be enhanced by the Court unless the grounds of enhancement are duly stated, it will be for the Court to determine, in case of dispute, whether those grounds exist, and whether they are such as to justify the enhancement.

(*A*)—*Leases.*

22. Every ryot is entitled to receive from the landholder a pottah or lease containing the following particulars :—

(*a*) the quantity and boundaries of the land, and, where fields have been numbered in a Government survey, the number of each field;

(*b*) the length of the "lagee," or measuring rod, with reference to which the quantity of the land has been computed;

(*c*) the amount of annual rent payable for such land;

(*d*) the instalments in which, and the dates on which, such rent is to be paid;

(*e*) any special conditions of the lease not inconsistent with the clauses of this section;

(*f*) if the rent is payable in kind, or is calculated on a valuation of the produce, the proportion of produce to be delivered, the mode of valuation, and the time, manner and place of delivery.

23. No lease shall contain any stipulation barring the acquisition of a right of occupancy, nor shall the acceptance of any lease prejudice any right, or create a presumption against the existence of any right which a ryot may claim irrespectively of such lease.

24. In the absence of any written specification of the times of payment, the dates on which rent shall become payable are as follows :—

On last day of Poos ... ... ½ the rent.
Ditto of Chyet ... ... ¼ ditto.
Ditto of Assin ... ... ¼ ditto.

25. Ryots at fixed rates are entitled to receive perpetual leases at such rates.

26. Occupancy ryots are entitled to receive pottahs for a term not exceeding ten years at fair and equitable rates. In case of dispute, the rate previously paid by the ryot shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

27. Common ryots are entitled to receive leases for any term not exceeding five years at the rates hitherto paid by them; provided that no such ryot shall be entitled to receive second and successive leases at the rate hitherto paid by him until twelve months after the expiration of his last lease. If within such period the landholder shall not have ejected such ryot or have obtained an order under this Act for the enhancement of his rent, or if the parties shall not have entered into a new engagement, such ryot shall be entitled to receive another lease for a term not exceeding five years at the rate hitherto paid by him.

If the Court, in a suit for enhanced rent, shall have decreed a higher rate than that previously paid by him, such ryot shall be entitled to receive a lease for a term not exceeding five years at the said higher rate.

28. Every landholder who grants a lease is entitled to receive, from the person to whom the lease is granted, a kabuliyat or counterpart engagement in conformity with the terms of the lease. The tender to any ryot of a lease, such as the ryot is entitled to receive, shall be held to entitle the landholder to receive a kabuliyat from such ryot.

29. If, on the trial of a suit for the delivery of a lease instituted by a ryot, the parties do not agree as to the term for which the lease is to be granted, the Court shall, subject to the limits imposed by sections 26 and 27, fix such term as under the

22. This section is taken mostly from section 2 of Act VIII (B.C.), 1869, and section 24 of the North-Western Provinces Act.

(*b*) This clause is new. By section 3 of Regulation II, 1795 (for the province of Benares), "the denomination and length of the rod" were required to be interested in pottahs, and the provision was an excellent one. I may also mention that in half of the villages in which land has recently been taken up in Mozufferpore district for the Tirhoot State Railway it has been found that the proprietors have reduced the 6½ cubits rod, used in the original settlement proceedings and in their own butwara cases, to one of 6¼ cubits only for measuring ryoti lands.

23. This section cancels section 7 of Act VIII (B.C.) of 1869. The latter section has been one of the chief obstacles in the way of a free interchange of pottahs and kabuliyats, and I can see no valid reason for its retention. The acquisition of a right of occupancy under certain conditions prescribed by the law is the natural privilege of a ryot, and no contract intended to nullify the law should be permitted.

24. Fixed dates are here substituted for "established usage" (*vide* section 21 of Act VIII (B.C.) of 1869). This change is strongly approved of by Messrs. Dampier and Molony (*vide* paragraphs 12 and 13 of thier respective notes).

25. Taken, with the exception of the word "perpetual" from section 25 of the North-Western Provinces Act.

26. Taken from section 5 of Act VIII (B.C.) of 1869, with the exception of the term of ten years.

27. When I originally suggested (*vide* para. 11 of my demi-official letter dated 9th October 1877) that every ryot should be entitled to claim a pottah for five years at the rent hitherto paid by him, I thought more of present than of future requirements. It is obvious, however, that unless this section is carefully worded, a ryot may continue to demand successive pottahs for terms of five years at a time, without interruption, and that in the end he may acquire a presumed right to hold at fixed rates without the proprietor having any voice in the matter. The provisions suggested in this section will enable the proprietor to protect his own interests.

The proposal regarding five years' pottahs is approved of both by Mr. Dampier and Sir. S. Bayley (*vide* paras. 10 and 14 of their respective notes).

28. Taken generally from section 10 of Act VIII (B.C.) of 1869.

29. Adopted from section 9 of Act VIII (B.C.) of 1869.

circumstances of the case may seem just and proper: Provided that the term shall not, in estates not permanently settled, extend beyond the period for which the proprietor of the estate has engaged with Government: Provided also that, if the defendant be a farmer or other person having only a temporary interest in the land, the term of the lease shall not extend beyond the period of the continuance of such interest.

(*B*)—*Registry of Transfers.*

30. Taken from section 26 of Act VIII (B.C.) of 1869.

30. All dependent talookdars and other persons possessing a permanent transferable interest in land, intermediate between the proprietor and the cultivator, are required to register, in the serishtah of the proprietor or superior tenant, to whom the rents of their talooks or tenures are payable, all transfers of such talooks or tenures, or portions of them, by sale, gift or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every proprietor or superior tenant is required to admit to registry and otherwise give effect to all such transfers when made in good faith, and all such successions and divisions: Provided that no proprietor or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the proprietor or superior tenant.

31. This section is taken from section 13 of the "Bill to provide for the more speedy realization of arrears of rent." In paragraph 5 of Bengal Secretary's letter to the Government of India, No. 503, dated 22nd February 1878, it is remarked that "the registration will be an acknowledgement by the zemindar of the validity of the tenure, and if he refuses to register, the law will enforce registration."

31. All occupancy ryots are required to register in the serishtah of the proprietor or superior tenant, to whom the rents of their lands are payable, all transfers of their tenures by sale, agreement or otherwise, which have been made after the commencement of this Act. Every proprietor or superior tenant is required to admit to registry and otherwise give effect to all transfers of whole tenures when made in good faith. And no ryot claiming a right of occupancy which has accrued *by transfer* after the commencement of this Act shall be entitled to prefer his claim unless the transfer of the tenure has been registered under this section.

32. Fees at the rate of two per cent. on the annual rent of the interest transferred may be levied by the proprietor or superior tenant on the registry under this Act of any transfer: provided that no fee shall exceed one hundred rupees.

33. This section is new.

33. Every tenant or ryot, whose tenure has been admitted to registry under section 31 or 32, is entitled to receive a copy of the entry under the signature of the proprietor or superior tenant.

(*C*)—*Relinquishment and ejectment.*

34. This section corresponds generally to section 20 of Act VIII (B.C.) of 1869. The words "not holding under a lease" and "for the ensuing year" are new, being taken from section 31 of the N.-W. P. Act. A lease, I think, should be treated here as an ordinary contract, and a ryot relinquishing land, without notice, when he does not hold under a lease, should not be made liable for rent for an indefinite period. The words "or if he receive it but" are also taken from the N.-W. P. Act.

34. Every ryot not holding under a lease, who desires to relinquish the land held by him, shall be at liberty to do so, provided he gives notice of his intention, in writing, to the landholder or his authorised agent in or before the month of Jeyt of the year preceding that in which the relinquishment is to have effect. If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land for the ensuing year. If the landholder or his agent refuse to receive such notice, or if he receive it but refuse to sign a receipt for the same, the ryot may make an

application on plain paper to the Collector in whose jurisdiction the lands are situate, who shall thereupon cause the notice to be served on such landholder or agent in the manner provided in section 20.

35. Any instalment of rent which is not paid on or before the day when the same is payable according to the lease or engagement, or if there be no written specification of the time of payment, on or before the date fixed by section 24, shall be held to be an arrear of rent, and shall be liable to interest at twelve per cent. per annum.

35. Transcribed with the necessary alterations from section 21 of Act VIII (B.C.) of 1869.

36. When an arrear of rent remains due from any ryot at the end of the month of Jeyt, such ryot shall be liable to be ejected from the land in respect of which the arrear is due: provided that no ryot at fixed rates or occupancy ryot, or ryot holding under a lease the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

36. Taken generally from section 22 of Act VIII (B.C.) of 1869.

37. When an arrear of rent shall be adjudged to be due from any farmer or other lease-holder not having a permanent or transferable interest in the land, the lease of such lease-holder shall be liable to be cancelled and the lease-holder to be ejected: provided that no such lease shall be cancelled, nor the lease-holder ejected, otherwise than in execution of a decree or order under this Act.

37. Taken from section 23 of Act VIII (B.C.) of 1869.

38. No ejectment of a ryot or forfeiture of a lease shall be decreed on account of any act or omission of the ryot—

(1) which is not detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let; or

(2) which by law, custom, or special agreement does not involve the forfeiture of the lease.

38. Taken from section 34 (c) of the North-Western Provinces Act.

39. If the landholder desire to eject an occupancy ryot, or a common ryot holding under an unexpired lease, against whom a decree has been passed and remains unsatisfied, he may at the end of the month of Jeyt apply to the Court to eject the ryot.

Such Court, on receiving such application, shall (subject to the provisions regarding limitation) cause a notice to be served on the ryot, stating the amount due under the decree, and informing him that if he does not pay such amount into Court within fifteen days from receipt of the notice he will be ejected from his land.

If such amount be not so paid, the Court may eject the ryot.

39. Taken generally from section 35 of the North-Western Provinces Act. On further consideration I think there is no sufficient necessity for sanctioning the ejectment of ryots at ANY time of the year when decrees are not satisfied promptly (*vide* paragraph 5 of my letter dated 9th October 1877). Under such a rule proprietors might take unfair advantage of the failure of a single harvest, and bring suits and eject ryots at a time when they had no means of paying their rents. But by the end of Jeyt a ryot has reaped all three principal harvests of the year, and his omission to pay his rent by that time cannot be attributed to bad luck. Though, strictly speaking, an occupancy ryot only possesses his right of occupancy so LONG as he pays his rent, he ought not to be placed in a less favourable position than common ryots with respect to liability for ejectment for arrears.

40. If the landholder desire to eject a common ryot, or any other tenant holding only for a limited period, after the determination of his tenancy, he may cause a written notice of ejectment to be served on such tenant, specifying the land from which the tenant is to be ejected, and informing him that he must vacate such land on or before the last day of the month of Jeyt next following, or that, if he means to contest the right to eject him, he must apply to the Court for that purpose on or before that date.

The notice shall be written in the vernacular language and character of the district, and shall be issued and served on or before the first day of the month of Cheyt through the office of the Collector, and the landholder shall pay the cost of service. It shall be served in the manner prescribed by section 20.

40. Taken generally from sections 37, 38, 39 and 40 of the North-Western Provinces Act.

The tenant on whom such notice has been served may, on or before the last day of the month of Jeyt next after the service, make an application to the Court contesting his liability to be ejected.

When such an application is made, the Court shall proceed to determine the question between the parties.

If no such application is made, the tenancy of the land in respect of which the notice has been served shall be held to cease on the last day of the month of Jeyt next after the service. The Court, if necessary, shall enforce the ejectment:

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of a kind in which an advance has been made by the lease-holder, and the proprietor's or land-holder's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the landholder must proceed by suit in the Court.

41. This section is taken from section 43 of the North-Western Provinces Act. It is specially needed in South Behar (*vide* paragraphs 22, 36, and 39, respectively, of Mr. Dampier's and Sir S. Bayley's notes.) The latter remarks that in this, as in the case of distraint, the Collector should be the executive officer to whom application should be made.

The knowledge that there is an authority to which reference can be made in case of dispute will no doubt tend to discourage unfair dealings between landholder and ryot, and to check frivolous disputes.

41. Wherever rent is taken by the division of the produce in kind or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the ryot and landholder either personally or by agent, if either landholder, or ryot, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop

An application may be presented by either party to the Collector requesting that a proper officer be deputed to make the division, estimate, or appraisement.

On receiving such application, the Collector shall issue a written notice to the opposite party or his agent to attend on the date and at the time specified in the notice, and shall depute an officer before whom such division, estimate, or appraisement shall be made.

If, on or before the date appointed, the dispute has not been amicably adjusted, three residents of the village shall be appointed assessors—one by each of the parties, and one by the officer deputed to divide the grain or estimate or appraise the crops; and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops:

Provided that if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

The officer deputed shall report his proceedings to the Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

(*D*)—*Measurement of lands.*

42. Taken generally from section 25 of Act VIII (B.C.) of 1869.

42. Every proprietor of an estate or owner of a tenure, or landholder entitled to receive the whole rents of an estate or tenure, has the right of making a general survey and measurement of the lands comprised in such estate or tenure, or any part thereof, unless restrained from doing so by express engagement with the occupants of the lands.

43. Taken from section 37 of Act VIII (B.C.) of 1869.

43. If any person intending to measure any land which he has right to measure, is opposed in making such measurement by the occupant of the land; or if any under-tenant or ryot having received notice of the intended measurement of

land held by him, which is liable to such measurement, refuses to attend and point out such land, the person claiming the right to measure such land may apply to establish his right to measure such land in the Court which would have jurisdiction in case such suit had been brought for the recovery of such land, and such Court shall hear and determine the right to make such measurement, and, if the case shall so require, shall make an order enjoining or excusing the attendance of any such under-tenant or ryot. If any under-tenant or ryot, after the issue of an order enjoining his attendance, neglects to attend and to point out the land, it shall not be competent to him to contest the correctness of the measurement made, or any of the proceedings held, in his absence.

44. If the proprietor of an estate or owner of a tenure, or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure, or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands, or any part of the lands comprised therein, such proprietor or other person may apply to the Court which would have had jurisdiction in case a suit had been brought for the recovery of such lands, and such Court thereupon, and on the necessary costs being deposited therein by the applicant, shall order such lands to be measured, and shall cause a copy of such order to be transmitted to the Collector in whose jurisdiction the lands are situate, together with the sum so deposited for costs, and the Collector shall thereupon proceed to measure such lands, and shall ascertain and record the names of the persons in occupation of the same, or, on the special application of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine and record the tenures and under-tenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable. If after due enquiry the Collector shall be unable to cause such lands to be measured, or to ascertain or record the names of the persons in occupation of the same, or if he shall (in any case in which such special application shall have been made as aforesaid) be unable to ascertain who are the persons having tenures or under-tenures in such land, or any part thereof, then, and in any such case, such Collector may declare the same to have lapsed to the party on whose application such enquiry may have been made. If any person, within fifteen days after such Collector shall have recorded the name of such person as being in occupation of such land, or any part thereof, or shall have declared a tenure to have lapsed, shall appear and show good and sufficient cause for his previous non-appearance, and satisfy such Collector that there has been a failure of justice, such Collector may, upon such terms or conditions as may seem fit, alter or rescind such order according to the justice of the case.

44. Taken from section 38 of Act VIII (B.C.) of 1869.

45. The Collector shall, as soon as conveniently may be after he shall have finally completed any such measurement and record, return a copy thereof to the Court by which such measurement had been ordered, and such Court shall receive and record the same; and every decision of the Collector made in pursuance of section 44 shall be appealable as if the same had been an order of the Court into which such copy had been returned,

45. Taken from section 39 of Act VIII (B.C.) of 1869.

made upon the day on which such copy was so returned; but, save as aforesaid, every decision of such Collector made in pursuance of the provisions of section 44 shall be final.

46. Taken from section 40 of Act VIII (B.C.) of 1869.

46. The provisions of any Act or Acts for the time being in force in Civil Courts in Bengal, relating to the evidence of witnesses, to procuring the attendance of witnesses and the production of documents, and to the examination, remuneration, and punishment of witnesses, shall apply to all proceedings before any Collector under section 44; and for the purposes aforesaid, the Collector shall have all the powers and authorities in and by such Acts or any of them conferred upon the Court.

47. The first half of this section is taken from section 41 of Act VIII (B.C.) of 1869; the latter half is new—"The Collector," observed L. S. Jackson, J., "is the depository of the standard pole of each pergunnah, and it is exclusively within his province to declare what the standard of each pole is" (Tarucknath Mookerjee, 5 W. R. 17); but this ruling has been set aside by subsequent decision of the High Court, and the Civil Court now decides every such question. It seems to me that the Collector is the most competent to exercise this power.

47. All measurements made under this Act shall be made according to the standard pole of the pergunnah in which the land is situated, and, in case of dispute, the Collector shall determine what the standard of each pole is.

(*E*)—*Compensation for improvements made by ryots.*

48. Sections 48-51 are taken from sections 44-47 of the North-Western Provinces Act—

"The Land Improvement Act, 1871," allows the Collector to make advances to tenants for making improvements, and, by the rules framed under the said Act, the Collector is required to provide for the proper inspection of works constructed with such advances, for the keeping of accounts connected therewith, &c. Again, the Opium Department is in the habit of making yearly advances to ryots for the construction of wells, and registers of such advances are regularly kept up. It seems therefore quite reasonable to make provision for awarding compensation for impropoments in the manner proposed, and there can be little doubt that the revenue authorities are best qualified and have most facilities for determining such compensation.

48. If any ryot, or any person from whom he has inherited or purchased, make any such improvements on the land in his possession as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land without payment of compensation for such improvements.

Explanation.—The word "improvements" as used in this section means works by which the annual letting value of the land has been, and at the time of demanding compensation continues to be, increased, and comprises—

(*a*) tanks, wells, and other works for the storage, supply, or distribution of water for agricultural purposes;

(*b*) works for the drainage of land, or for the protection of land from floods, or from erosion or other damage by water;

(*c*) the reclaiming, clearing, or enclosing of lands for agricultural purposes;

(*d*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto.

49. Such compensation may at the option of the landholder or his representative be made—

(1*st*) by payment in money;
(2*nd*) by a rent to be charged on the land;
(3*rd*) by the grant of a beneficial lease of the land, by the landholder or his representative, to the ryot or his representative;
(4*th*) partly by one or by any two of the said ways, and partly by the others or other of the same ways.

50. In case of differences as to the amount or value of the compensation tendered, either party may apply to the Collector stating the matter in dispute, and requesting a determination thereof.

On receiving such application, the Collector shall—

(*a*) cause notice thereof to be served on the other party;

(*b*) take such evidence as the parties or either of them may adduce;

(*c*) make such further enquiry as the Collector may deem necessary; and

(*d*) determine the amount of the payment in money, and the amount and incidence of the rent charge, and the terms of the lease or any of such matters.

51. In determining the amount of value mentioned in section 50, or the terms of such lease, the Collector shall take into account any assistance given to the ryot by the landholder either directly in money, material, or labour for the purpose of making such improvements, or indirectly by allowing the ryot to hold at a favourable rate of rent.

The provisions of section 46 shall apply to all proceedings before any Collector under section 50.

51. This clause is new.

(*F*)—*Compensation for wrongful acts and omissions.*

52. Every ryot from whom any sum is exacted in excess of the rent specified in his lease, or payable under the provisions of this Act, whether as abwab or under any other pretext; and every ryot from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the landholder compensation not exceeding five times the amount so exacted or paid.

Receipts for rent shall specify the period or crop on account of which the rent is acknowledged to have been paid, and counterfoils of the same shall be kept in the cutcherry of the landholder. Such receipts and counterfoils shall bear consecutive numbers, and shall be bound together in books of not less than fifty receipts each. Neglect or refusal to give such a receipt shall be deemed to be a withholding of a receipt.

52. Taken generally from section 11 of Act VIII (B.C.) of 1869, and section 48 of North-Western Provinces Act, but the amount of compensation has been raised from "double" to "five times the amount exacted or paid." It is scarcely reasonable to suppose that a ryot from whom Rs. 2 or Rs. 3 may have been exacted as cesses will bring a suit in the Civil Court in the hope of recovering Rs. 4 or Rs. 6.

The latter portion of the second clause of this section is taken from section 3 of "the Bill for the more speedy realization of arrears of rent."

53. If payment of rent, whether the same be legally due or not, is extorted from any ryot by illegal confinement or other duress, he shall be entitled to recover from the person guilty of such extortion such further compensation, not exceeding the sum of two hundred rupees, as the Court may think reasonable.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person guilty of such extortion may be subject under the Indian Penal Code.

53. Taken from section 13 of Act VIII (B.C.) of 1869, and section 49 of the North-Western Provinces Act.

(*G*)—*Deposit of Rent with the Collector.*

54. If any ryot shall at the malcutcherry for the receipt of rents or other place where the rents of the land or other immoveable property held by him are usually payable, tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender to the landholder or his agent; and if the amount so tendered shall not be accepted, and a receipt in full shall not be forthwith granted, it shall be lawful for the ryot, without any suit having been instituted against him, to deposit within ten days from the date of the tender such amount with the Collector to the credit of the landholder; and such deposit shall, so far as the ryot and all persons claiming through or under him are concerned, in all respects operate as, and have the full effect of, a payment then made by the ryot of the amount deposited to such landholder.

54. Sections 54-55 are taken, with a few verbal alterations, from sections 46-47, Act VIII (B.C.) of 1869, as proposed to be amended by section 16 of "the Bill for the more speedy realization of arrears of rent." The amendment consists in substituting the agency of the Collector for that of the Civil Court.

55. Such deposit shall be received by the Collector on the application of the ryot, or his agent, making a declaration in the form, or as nearly as circumstances will admit, in the form set forth in the Schedule (A) hereto annexed, and the Collector shall give a receipt for the same under his seal. If the declaration shall contain any averment which the person making the declaration shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the

law for the time being in force for the punishment of giving or fabricating false evidence. Upon receiving the money so deposited, the Collector shall issue a notice to the person to whose credit it has been deposited in the form set forth in the Schedule (B) hereto annexed; and such notice shall be served by the Collector without the payment of any fee, either upon the person to whom it is addressed, or upon his naib, gomashtah, or other agent; and, in the absence of any such agent, it shall be served by sticking up a copy of the same in the Collector's Court, and another copy upon the mâlcutcherry for the receipt of rents, or other place where the rents are usually paid for the land in respect of which the money has been deposited. If the person to whom such notice is issued, or his duly authorised agent shall appear, and apply that the money in deposit be paid to him, it shall be immediately made over to him.

CHAPTER III.—Distraint.

56-57. These sections contain the provisions, with one or two verbal alterations, of the law as set forth in section 112 of Act X, 1859, section 68 of Act VIII (B.C.) of 1869, and sections 56-57 of the North-Western Provinces Act.

The enactment of proviso (c) is rendered necessary by sections 78 and 79 of Act VII (B.C.) of 1876, which exempt ryots from paying rent to unrecorded proprietors, managers and mortagees.

56. The produce of all land in the occupation of a cultivator shall be deemed to be hypothecated for the rent payable in respect of such land; and when an arrear of rent is due from any cultivator, the person entitled to receive not immediately from him, may, instead of suing for the arrear as hereinafter provided, recover the same by distraint and sale of the produce of the land in respect of which the arrear is due, under the rules contained in this chapter.

57. Provided—

(*a*) that when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given, shall not be liable to be distrained:

(*b*) that no co-sharer, or sharer in a dependent talook or other tenure in which a division of land has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorised to collect the rents of the whole estate, revenue-free property, talook of tenure, on behalf of all the co-sharers or sharers in the same:

(*c*) that no proprietor or manager or mortgagee shall exercise the power of distraint unless his name and the extent of his interest shall stand recorded in the Collector's register under Act VII (B.C.) of 1876.

58. *Vide* section 113 of Act X, 1859, section 69 of Act VIII (B.C.) of 1869, and section 58 of the North-Western Provinces Act. The present term of "one year" has been reduced to six months in accordance with the opinion of Sir S. Bayley (paragraph 29 of his note).

58. Distraint shall not be made for any arrear which has been due for a longer period than six months; nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under a written engagement for the payment of the excess executed by the cultivator, or by an order under this Act.

59. *Vide* section 114 of Act X, 1859, section 70 of Act VIII (B.C.) of 1869, and section 59 of the North-Western Provinces Act.

59. The power to distrain conferred by sections 56 and 57 may be exercised by managers under the Court of Wards, and other persons lawfully entrusted with the charge of landed property;

and also by the agents employed by such persons as aforesaid, in the collection of rent, if expressly authorised by power-of-attorney in that behalf:

Provided that, if any wrongful act is committed by any such agent under colour of the exercise of the said power, such agent and his principal shall be jointly and severally liable for any damages accruing by reason of such act.

60. When any person empowered to distrain property under section 56, section 57 or section 59, employs a servant or other person to make the distress, he shall give him a written authority (which may be on plain paper) for the same, and the distress shall be made in the name of the person giving such authority.

61. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with power to distrain under the provisions of this Act. But no such crops or products, other than the produce of the land in respect of which an arrear is due, or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to be distrained under this Act.

62. Before or at the time when distraint is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served personally on the defaulter; or, if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

63. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid equal in value, as nearly as may be, to the amount of the arrear and the costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

Within 24 hours after the service of such copy the distrainer shall be legally bound to furnish the Collector with a copy of the said list or description of property on one-anna stamped paper.

64. Standing crops and other ungathered products may, notwithstanding the distraint, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood. In either case the distrained property shall be placed in the charge of some

60. *Vide* section 120 of Act X, 1859, section 76 of Act VIII (B.C.) of 1869, and section 60 of the North-Western Provinces Act.

61. *Vide* section 115 of Act X, 1859, section 71 of Act VIII (B.C.) of 1869, and section 61 of North-Western Provinces Act.

62. *Vide* section 116 of Act X, 1859, section 72 of Act VIII (B.C.) of 1869, and section 62 of the North-Western Provinces Act.

The amended sections 72-75, as proposed in Mr. MacDonnell's draft Bill, though approved by Mr. Dampier and Sir S. Bayley (*vide* sections 15—16 and 29 of their Notes, respectively) do not at all commend themselves to me. Mr. MacDonnell condemns the existing law of distraint as being "unworkable," but I am not aware on what grounds he has formed his judgment. The facts that the zemindars of Behar prefer a cheap and high-handed mode of procedure to that prescribed by law, and that the ryots owing to their weakness and poverty rarely resist them in the Civil Court, do not prove that the law is workable. It seems to me that the cry for amendment in this respect should first come from Lower Bengal or the North-Western Provinces, where the ryots will not tolerate illegal distraint, and that if the zemindars of those provinces can obtain sufficient assistance from the existing law, there is no reason why the zemindars of Behar should find the law unworkable.

Neither zemindars nor putwaris as a body are fit to exercise the large powers with which Mr. MacDonnell proposes to invest them in the matter of distraint; and if summary jurisdiction in certain cases (as hereinafter proposed) is conferred on the Civil Courts, there should be less necessity than ever for resorting to distraint. So far as this district is concerned, neither the number of rent cases, nor the number of legal distraint cases, shows that the zemindars have any difficulty in collecting their just rents.

63. The first clause of this section contains the provisions of section 117 of Act X, 1859, section 73 of Act VIII (B.C.), of 1869, and section 63 of the North-Western Provinces Act.

The second clause is new, and is absolutely required if a stop is to be put to illegal distraint.

Intentional omission to furnish the Collector with a copy of the list will of course subject the distrainer to the penalties provided by section 176, Indian Penal Code.

64. *Vide* section 118 of Act X of 1859, section 74 of Act VIII (B.C.) of 1869, and section 64 of the North-Western Provinces Act.

person appointed by the distrainer for the purpose. Crops or products which, from their nature, do not admit of being stored, may be sold before they are reaped or gathered under the rules hereinafter provided; but in such case the distraint shall be made at least 20 days before the time when the crops, or products, or any part of the same, are fit for reaping or gathering.

65. Taken from section 65 of the North-Western Provinces Act. It differs from section 119 of Act X of 1859, and section 7 of Act VIII (B.C.) of 1869, in respect of the authority to which application may be made. The substitution of the "Collector" for the "Civil Court" is strongly advocated by Mr. Dampier and Sir S. Bayley (*vide* paragraphs 17 and 31 of their Notes respectively).

65. If a distrainer is opposed or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector, who may, if he thinks necessary, depute an officer to assist the distrainer in making the distraint.

66. *Vide* section 121 of Act X of 1859, section 77 of Act VIII (B.C.) of 1869, and section 66 of the North-Western Provinces Act.

66. If at any time after property has been distrained and before the day fixed for putting it up to sale as hereinafter provided, the owner of the property tenders payment of the arrear demanded of him, and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

67. *Vide* section 122 of Act X of 1859, section 78 of Act VIII (B.C.) of 1869, and section 67 of the North-Western Provinces Act. If the Government would adopt my proposal to appoint a superior class of Rural Registrars and to make the Rural Registrar of each thana the canoongoe or supervisor of putwaris in that thana, no fitter or handier officer for selling distrained property could be selected.

67. Within five days from the time of the storing of any distrained crops or products, or if the crops or products do not from their nature admit of being stored, within five days from the time of making the distress, the distrainer shall apply for sale of the same to the officer for the time being authorised by the local Government to sell distrained property within the thana in which they are situate.

68. *Vide* section 123 of Act X of 1859, section 79 of Act VIII (B.C.) of 1869, and section 68 of the North-Western Provinces Act.

68. The application shall be in writing, and shall contain—

(*a*) an inventory or description of the property distrained;

(*b*) the name of the defaulter, and his place of residence;

(*c*) the amount due, and the date of the distress; and

(*d*) the place in which the distrained property is.

Together with the application, the distrainer shall deliver to the said officer the fee for the service of a notice upon the defaulter as hereinafter provided.

69. *Vide* section 124 of Act X of 1859, section 80 of Act VIII (B.C.) of 1869, and section 69 of the North-Western Provinces Act.

69. Immediately on receipt of the application, the said officer shall send a copy of it to the Collector;

and shall serve a notice in the Schedule (C) hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded or to institute a suit to contest the demand before the Court, within the period of 15 days from the receipt of the notice.

He shall at the same time send to the Collector, for the purpose of being put up in his office, a proclamation fixing a day for the sale of the distrained property, which shall not be less than 20 days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain—

(*a*) a description of the property, and shall specify

(*b*) the demand for which it is to be sold, and

(*c*) the place where the sale is to be held.

70. *Vide* section 125 of Act X of 1859, section 81 of Act VIII (B.C.) of 1869, and section 70 of the North-Western Provinces Act.

70. If a suit is instituted in pursuance of the aforesaid notice, the Court shall transmit to the officer referred to in section 67, or, if so requested, shall deliver to the owner of the distrained property a certificate to the institution of such suit;

and on such certificate being received by, or presented to, the said officer, he shall suspend the sale.

71. A person whose property has been distrained in the manner hereinbefore provided, may immediately after the distress, and before the issue of notice of sale, institute a suit to contest the demand of the distrainer.

When such suit is instituted, the Court shall send immediate information of such institution to the Collector, who shall proceed in the manner prescribed in the last preceding section.

If, thereafter, application for the sale of the property is made to the officer referred to in section 67, he shall send a copy of the application to the Collector and suspend further proceedings, pending the decision of the case.

71. *Vide* section 126 of Act X of 1859, section 82 of Act VIII (B.C.) of 1869, and section 71 of the North-Western Provinces Act.,

72. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with a surety, binding himself to pay whatever sum may be adjudged to be due from him, with interest and costs of suit;

and when such bond is executed, the Court shall give to the owner of the property a certificate to that effect, and, if so requested, shall direct the Collector to serve the distrainer with notice of the same;

and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector, the property shall be released from distraint.

72. *Vide* section 127 of Act X of 1859, section 83 of Act XIII (B.C.) of 1869, and section 72 of North-Western Provinces Act.

73. If the institution of a suit to contest the demand of the distrainer has not been certified in the manner hereinbefore provided to the said officer, on or before the day fixed in the proclamation of sale, he shall, unless the said demand, with such costs of the distress as are allowed by him, be discharged in full, proceed in manner hereinafter mentioned to sell the property or such part of it as may be necessary to satisfy the demand with the costs of distress and sale.

73. *Vide* section 128 of Act X of 1859, section 85 of Act VIII (B.C.) of 1869, and section 73 of North-Western Provinces Act.

74. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the said officer is of opinion that it is likely to sell there to better advantage.

The property shall be sold by public auction, in one or more lots, as the officer holding the sale may think advisable;

and if the demand, with the costs of distress and sale, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

74. *Vide* section 129 of Act X of 1859, section 86 of Act VIII (B.C.) of 1869, and section 74 of the North-Western Provinces Act.

75. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) be not offered for it, and if the owner of the property or some person authorised to act on his behalf apply to have the sale postponed until the next day, or if a market be held at the place of sale the next market day, the sale shall be postponed until such day, and shall be then completed, whatever price may be offered for the property.

75. *Vide* section 130 of Act X of 1859, section 87 of Act VIII (B.C.) of 1869, and section 75 of North-Western Provinces Act.

76. The price of every lot shall be paid for in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary;

and in default of such payment, the property shall be put up again and sold.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

76. *Vide* section 131 of Act X of 1859, section 88 of Act VIII (B.C.) of 1869, and section 76 of the North-Western Provinces Act.

77. *Vide* section 132 of Act X of 1859, section 89 of Act VIII (B.C.) of 1869, and section 77 of the North-Western Provinces Act.

77. From the proceeds of every sale of distrained property under this Act the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall send the amount so deducted to the Collector in order that it may be credited to Government.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress, and of the issue of the notice and proclamation of sale prescribed in section 69, to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale;

and the surplus (if any) shall be delivered to the person whose property has been sold.

78. *Vide* section 133 of Act X of 1859, section 90 of Act VIII (B.C.) of 1869, and section 78 of the North-Western Provinces Act.

78. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

79. *Vide* section 134 of Act X of 1859, section 91 of Act VIII (B.C.) of 1869, and section 79 of the North-Western Provinces Act.

79. Officers holding sales under this chapter are required to bring to the notice of the Collector any material irregularities committed by distrainers under colour of this Act;

and if, in any case on proceeding to hold any such sale, the officer holding it find that the owner of the property distrained has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector, who shall thereupon direct the issue of another notice and proclamation of sale under section 69, or pass such other order as he thinks fit.

80. *Vide* section 135 of Act X of 1859, section 92 of Act VIII (B.C.) of 1869, and section 80 of the North-Western Provinces Act.

80. When an officer goes to any place for the purpose of holding a sale, and no sale takes place, either for the reason stated in section 79, or because the demand of the distrainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

If the distrainer's demand be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of his property under the warrant of the Collector:

Provided that in no case shall a larger amount than ten rupees be recoverable under this section.

81. *Vide* section 137 of Act X of 1859, section 94 of Act VIII (B.C.) of 1869, and section 81 of the North-Western Provinces Act.

81. When a suit has been instituted to contest the demand of a distrainer, and the distrained property has not been released on security, if the demand or any portion of it is adjudged to be due, the Collector shall issue an order to the officer authorising the sale of such property;

and on the application of the distrainer within five days from the receipt of such order by the officer, such officer shall publish a second proclamation in the manner prescribed in section 69, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation;

and unless the amount adjudged to be due with the costs of distress be paid, shall proceed to sell the property in the manner hereinbefore provided.

82. *Vide* section 138 of Act X of 1859, section 94 of Act VIII (B.C.) of 1869, and section 82 of the North-Western Provinces Act.

82. In all suits instituted to contest the distrainer's demand, the distrainer shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the provisions hereinafter contained.

If the demand or any part thereof is found to be due, the Court shall make a decree for the amount in favour of the distrainer, together with such costs of suit as to such Court may seem proper, and the amount may be recovered by sale of the property, as provided in the last preceding section, if the distress has not been withdrawn;

and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter;

or, if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

If the distraint is adjudged to be vexatious or groundless, the Court, besides directing the release of the distrained property, may award such compensation to the plaintiff as the circumstances of the case may require.

83. *Vide* section 139 of Act X of 1859, section 96 of Act VIII (B.C.) of 1869, and section 83 of the North-Western Provinces Act.

83. If any person claim as his own property which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and such other person to try the right to the property, in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

When any such suit is instituted, the property may be released upon security being given for the value of the same.

If the claim is dismissed, the Court shall make an order for the sale of the property, or for the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

If the claim is upheld, the Court shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case require:

Provided that no claim to any produce of land liable to distraint under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, shall bar the prior claim of the person entitled to the rent of the land; nor shall any attachment in execution of a judgment or decree of any Court prevail against such prior claim.

84. *Vide* section 140 of Act X of 1859, and section 84 of the North-Western Provinces Act. No corresponding section is found in Act VIII (B.C.) of 1869. The proviso in the two former Acts has been omitted, as the Civil Court in this Act is the authority which would try the suit.

84. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrear is claimed by, or on behalf of, any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him before and up to the time of the commencement of the suit shall be enquired into, and the suit shall be decided according to the result of such enquiry.

85. *Vide* section 141 of Act X of 1859, section 97 of Act VIII (B.C.) of 1869, and section 85 of the North-Western Provinces Act.

85. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from

some other person, is prevented by any sufficient cause from bringing a suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by section 71 or 83, and his property is in consequence brought to sale, he may, nevertheless, institute a suit under this Act to recover damages for the illegal distress and sale of his property.

86. Taken, with the exception of the proviso, from section 142 of Act X of 1859, section 98 of Act VIII (B.C.) of 1869, and section 86 of the North-Western Provinces Act. The proviso, in my opinion, is strongly needed. The existing law provides heavy punishment for unlawful distraint made by persons "not empowered to distrain;" but it affords no remedy except a civil suit (which is practically no remedy at all) to ryots who have suffered from the wrongful and oppressive acts of persons "empowered to distrain." Moreover, even in a civil suit, the plaintiff can only recover damages for any actual injury he may have sustained. Oppressive landholders are thus directly encouraged to abuse their powers of distraint. By requiring the sanction of the Collector to the institution of a complaint for mischief, the law will protect distrainers from unfounded or vexatious prosecution. The necessity of the provision is admitted by Sir S. Bayley (*vide* paragraphs 30 and 31 of his Note).

86. If any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act;

or if any distrained property is lost, damaged, or destroyed by reason of the distrainer not having taken proper precautions for the due keeping and preservation thereof;

or if the distraint is not immediately withdrawn when it is required to be withdrawn by any provision of this Act;

the owner of the property may institute a suit under this Act to recover damages for any injury which he may have thereby sustained:

Provided, however, that if any act or omission mentioned in this section shall have been occasioned by a want of due care and attention on the part of the distrainer, such distrainer shall be held to have committed "mischief," and shall be subject to the penalties provided for that offence; but no complaint of such offence shall be entertained in the Criminal Court without the sanction of the Collector.

87. *Vide* section 143 of Act X of 1859, section 90 of Act VIII (B.C.) of 1869, and section 87 of the North-Western Provinces Act.

In Act VIII (B.C.) of 1869 the offender here described is made liable to punishment by fine of Rs. 800, when his act does not amount to criminal trespass; but the other two Acts declare that he "shall be held to have committed criminal trespass." Sir S. Bayley thinks that "it is not desirable to make separate provision for what are already offences under the Penal Code," but my experience leads me to think the contrary in respect of matters of this kind. A Divisional Bench of the High Courtactually ruled in a case of this district that the word "intent" in section 441, Indian Penal Code (defining criminal trespass), was used in the narrow and restricted sense of "express purpose," and the difficulty of proving express purpose to injure another when a man is acting solely in his own selfish interests may be easily imagined. Moreover, where the law wishes to punish a person for criminal trespass under circumstances in which there may be room for doubt, whether his act technically amounts to criminal trespass or not, it is usual to enact that he shall be held to have committed the offence, *e.g.*, in section 5 of Act No. I (B.C.) of 1866 it is declared that, whoever "shall, except with the sanction of the Magistrate of the district, keep a ferry-boat for the purpose of plying for hire within a distance of two miles above or below the place where such public ferry is established, shall be liable to the punishment provided by section 447 of the Indian Penal Code."

87. If any person not empowered to distrain property under sections 56, 57, or 59, nor employed for the purpose under a written authority by a person so empowered, wrongfully distrains or sells, or causes to be sold, any property under colour of this Act, the owner of the property so distrained or sold may institute a suit under this Act to recover damages from such person for any injury which the plaintiff has sustained from the distraint or sale.

And such person shall be held to have committed "criminal trespass," and shall be subject to the penalties provided for that offence, in addition to any damages which may be awarded against him in such suit.

88. *Vide* section 144 of Act X of 1859, section 100 of Act VIII (B.C.) of 1869, and section 88 of the North-Western Provinces Act.

88. Provided that every suit instituted under any of the three last preceding sections shall be commenced within the period allowed by section 100.

89. This section is suggested in lieu of the provisions contained in section 145 of Act X of 1859, section 101 of Act VIII (B.C.) of 1869, and section 89 of the North-Western Provinces Act. Under the existing law an offender, as here described, cannot be adequately punished; but if the proposed provisions be made law, the Criminal Court will be able both to punish the offender summarily by imprisonment, and also to award compensation to the distrainer under section 308, Code of Criminal Procedure.

89. If any person resists a distraint of property duly made under this Act, he shall be held to have committed "assault," and shall be subject to the penalties provided for that offence.

If any person forcibly or clandestinely removes any property legally distrained under this Act, he shall be held to have committed "mischief," and shall be subject to the penalties provided for that offence.

No complaint of assault or mischief on account of any act mentioned in this section shall be entertained in the Criminal Court without the sanction of the Collector.

If the offender be not the owner of the property concerned, he shall also make good to the distrainer the value of the same.

90. Notwithstanding anything contained in this Act, all crops and products declared liable to distraint under this Act shall be liable to distraint whether they belong to the person from whom the arrear of rent is due or to any under-tenant of such person, and no such under-tenant shall institute a suit to try the right to the possession of such crops and products, or to recover damages for the distress and sale of the same under this Act; but such under-tenant may deduct the value of the crops and products belonging to him which have been so distrained from the rent due from him to such person as aforesaid, or may recover the same by suit from such person.

90. This section is taken from section 20 of the "Bill for the more speedy realization of arrears of rent."

91. The estimated value of the claim made in any suit filed under the provisions of sections 69, 71, and 83 shall be deemed to be the amount of arrears of rent for which the distraint shall have been made.

91. Taken from section 84 of Act VIII (B.C.) of 1869.

92. All proceedings of officers distraining, or assisting distrainers, or holding sales, under this chapter shall be subject to the revision and orders of the Collector.

92. *Vide* section 136 of Act X of 1859, section 93 of Act VIII (B.C.) of 1869, and section 90 of the North-Western Provinces Act.

CHAPTER IV.—PROCESS (OF REVENUE COURTS).

93. Every process issued by a Collector under this Act shall be under his seal and signature, and shall be served or executed by the nazir, or by such other officer as the Collector may direct, at the cost of the party at whose instance it is issued. The amount of such cost, and, in the case of summons to a witness, the sum required for his travelling expenses, shall be deposited in Court before the process is issued: Provided that, if in any case the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

94. Any resistance or opposition to the lawful process of a Collector under this Act may be punished by the Collector according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the process of the courts of civil justice. When in any such case the offender is not present, the Collector may summon him to answer to the charge, and if, after due service of the summons, he fail to attend, may issue a warrant for his apprehension.

93-94. These two sections correspond to sections 146-147 of Act X, and to sections 91-92 of the North-Western Provinces Act.

CHAPTER V.—JURISDICTION OF COURTS.

95. Save as in this Act is otherwise provided, all suits brought for any cause of action arising under this Act shall be cognizable by the Civil Courts according to their several jurisdictions; and such suits, and all proceedings therein, shall be regulated by the Code of Civil Procedure, and by such further and other enactments of the Governor General in Council in relation to Civil Procedure as now are, or from time to time may be, in force; and all the provisions of the said Code of Civil Procedure and of such other enactments shall apply to such suits.

95. This section corresponds to sections 33 and 34 of Act VIII (B.C.) of 1869.

96. The cause of action in suits brought for the delivery of any pottah or kabuliyat, or for the cancelment of any lease; for the determination of rates of rent; for illegal exactions of rent, cess, or impost; for refusal of receipts for rent paid; for extortion of rent; for excessive demand of

96. Taken from section 35 of Act VIII (B.C.) of 1869.

rent; for abatement of rent; for arrears of rent, and for refusing to register transfers, successions, or divisions under sections 30 and 31, shall be deemed to have arisen within the jurisdiction of the Court which would have had jurisdiction to entertain a suit for the recovery of the land, or other immovable property in relation to which the cause of action arose, and shall be brought in such Court and in no other Court.

97. Taken from section 36 of Act VIII (B.C.) of 1869.

97. If the land, which by the provisions of the next preceding section, determines the place in which the cause of action in the suits in the said section mentioned shall be deemed to have arisen, be situate within the jurisdiction of different Courts, the provisions of section 19 of the Code of Civil Procedure shall apply to such suits as if the same had been suits for the recovery of such land.

98. Taken from section 42 of Act VIII (B.C.) of 1869.

98. All suits brought under any of the provisions of this Act shall be entered in a special register of the Court kept for that purpose.

99. Taken from section 24 of Act VIII (B.C.) of 1869.

99. All suits which under the provisions of this Act may be brought by or against proprietors or other persons in the receipt of the rent of the land, may be brought by or against surburakars or tehsildars of estates held under khas management, whether such estates are the property of Government or of individuals.

100. Taken from sections 27 and 100 of Act VIII (B.C.) of 1869.

100. All suits instituted for the recovery of damages on account of the illegal exaction of rent, or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress, or on account of the excessive demand of rent, and all suits for abatement of rent, and all suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or of the breach of the conditions of any contract by which a ryot may be liable to be ejected, or a lease may be liable to be cancelled, and all suits to recover the occupancy of any land, farm, or tenure from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same, and all suits arising out of the exercise of the power of distraint for arrears of rent conferred on landholders and others, by this or any other Act, or out of any acts done under colour of the exercise of the said power, shall be commenced within the period of one year from the date of the accruing of the cause of action, and not afterwards:

Provided that any suits which may be instituted under sections 85, 86 or 87 shall be commenced within three months from the date of the occurrence of the cause of action.

101. *Vide* section 28 of Act VIII (B.C.) of 1869.

101. Suits for the delivery of pottahs or kabuliyats, and for the determination of the rates of rent at which such pottahs or kabuliyats are to be delivered, may be instituted at any time during the tenancy, subject, however, to the restrictions contained in section 27.

102. Taken from section 29 of Act VIII (B.C.) of 1869.

102. Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the month of Jeyt of the year in which the arrear claimed shall have become due: Provided that if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under the provisions hereinbefore enacted, and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the month of Jeyt of the year on account of which such enhanced rent is claimed.

103. Suits for the recovery of money in the hands of an agent, or for the delivery of accounts or papers by an agent, may be brought at any time during the agency, or within one year after the determination of the agency of such agent: Provided that if the person having the right to sue shall, by means of fraud, have been kept from the knowledge of the receipt of any such money by the agent, or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person, but no such suit shall in any case be brought at any time exceeding three years from the termination of the agency.

103. Taken from section 30 of Act VIII (B.C) of 1869.

104. Whenever a deposit on account of rent shall have been made under the provisions of this Act, no suit shall be brought against the person making the deposit, or his representatives, on account of any rent which accrued due prior to the date of the deposit, unless such suit be instituted within six months from the date of the service of the notice in section 55 of this Act mentioned.

104. Taken from section 31 of Act VIII (B.C.) of 1869.

105. Every naib or gomashtah hereto specially authorised by any writing under the hand of his employer, shall, for the purposes of all suits for any of the causes of action mentioned in section 100, 101 or 103 of this Act be deemed to be the recognised agent of such employer within the meaning of section 37 of the Code of Civil Procedure, though such employer may be within the jurisdiction of the Court in which such naib or gomashtah may appear or make any application.

105. Taken from section 32 of Act VIII (B.C.) of 1869.

CHAPTER VI.—PROCEDURE IN SUITS UP TO JUDGMENT.

106. In any suit hereafter to be brought for the recovery of an arrear of rent, the plaint shall specify the name of the village and estate and of the pergunnah or other local division in which the land is situate, the yearly rent of the land, the amount (if any) received on account of the year for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due. If the arrear is alleged to be due from any ryot, the plaint shall further specify the quantity of land; and where fields have been numbered in a Government survey, the number (if it be possible to give it) of such field.

Provided that no plaint for arrears of rent, or for ejectment on account of non-payment of rent, shall be received, unless it be accompanied by the zemindari accounts or other documentary evidence on which it is based; such zemindari accounts or other documentary evidence being in the form prescribed by the orders of the local Government at the time in force, and being authenticated by the registered putwari.

106. The first clause of this section is taken from section 48 of Act VIII (B.C.), 1869.

The proviso is adopted from the Collector of Durbhunga's draft Bill, and is approved by Sir S. Bayley (*vide* paragraph 10 of his Note).

107. In every suit for the delivery of pottahs or kabuliyats, and for the determination of the rates of rent at which such pottahs or kabuliyats are to be delivered; in every suit for the recovery of damages on account of the illegal exaction of rent or of any unauthorised cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress; in every suit on account of the excessive demand of rent, and in every suit for abatement of rent, in every suit for the recovery of arrears of rent; and in every suit for the determination of class of tenure, any number of ryots or other tenants may be sued or may sue collectively;

107-109. These three sections are based on sections 16 and 17 of the "Agrarian Disputes Act" (VII B.C. of 1876). *Vide* also the Collector of Durbhunga's draft Bill, and paragraph 11 of my letter dated 9th October 1877.

and it shall be no ground for dismissing or refusing to hear the application or plaint that such ryots or other tenants are wrongly joined as defendants or plaintiffs: Provided that the suit by or against all the tenants be of the same nature, and be on account of lands situate in the same estate, or where the estate consists of more than one village, in the same village, having one registered putwari.

108. No order shall be passed in any suit under section 107, unless the officer making such order is satisfied that all parties have had an opportunity to appear and make objection to any claims preferred against them;

and if at any time it shall appear to the Court that the question between any two of the parties of whom one is so joined with others cannot conveniently be so jointly tried, the Court may order a separate trial to be held.

109. Every order passed in any such case as is mentioned in section 107 shall specify the extent to which each of the ryots or other tenants named in the order shall be affected thereby.

110-116. These sections have been transcribed from sections 4-11 of the "Bill for the more speedy realization of arrears of rent," in accordance with the views expressed by Sir S. Bayley in paragraph 40 of his Note. Section 12 of that Bill I have not reproduced as section 9. Explanation II of the present Bill proposes to make a right of occupancy transferable only so long as no decree is outstanding against the tenant for rent due on account of such tenure. When a decree for such rent is not satisfied (under certain circumstances) within 15 days, it is proposed to make the occupancy right resumable by the zemindar as FORFEIT. Consequently such a right will never be sold under the circumstances contemplated in section 12 of the Bengal Bill. When writing in paragraph 40, "I have also a strong opinion as to the expediency of section 12 empowering the decreeholder to sell up right of occupancy in execution," Sir S. Bayley seems to have overlooked the effect of the opinion expressed in his 25th paragraph as follows:—

"I would also adopt Mr. Worsley's subsidiary proposals, making occupancy rights transferable by sale so long as there is no outstanding decree of rent; and I would make them resumable by a zemindar as FORFEIT when rent is not paid within 15 days of decree."

The words "on registered engagements or at rates previously sanctioned by the Court" are new, and their substance is generally approved by the highest authority (*vide* paragraph 11 of Mr. Secretary Mackenzie's Note).

110. From and after the commencement of this Act all suits for arrears of rent brought on registered engagements or at rates previously sanctioned by the Court, and within 12 months after such arrears have become due, may, in case the plaintiff shall so desire, be commenced as hereinafter is mentioned (that is to say), the plaint shall be in the form prescribed by law, but the summons shall be in the Schedule (D) annexed to this Act; and in any case in which the plaint and summons shall be in such forms respectively, it shall not be lawful for the defendant to appear to defend the suit unless he shall obtain leave from a Judge, as hereinafter mentioned, so to appear and defend; and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum mentioned in the summons, and interest on the same at the rate of 12 per cent. per annum to the date of decree, together with a sum for costs which shall be ascertained in the usual way, and such decree shall be enforced forthwith.

111. The Court shall, upon application within the period of 14 days from the service of such summons, give leave to appear and to defend the suit upon the defendant paying into Court the sum mentioned in the summons, or upon his satisfying the Court by his examination upon oath or affirmation that he has a defence, or can adduce such facts as the Court may deem sufficient to support the application, and on such terms as to security, framing, and recording of issues or otherwise, as to the Court may seem fit.

112. After decree the Court may, under special circumstances, set aside the decree, and, if necessary, stay or set aside execution, and may give leave to appear to the summons and to defend the suit if it shall seem reasonable to the Court so to do, and on such terms as to the Court may seem just.

113. No appeal shall be from any decree of the Court under section 110 unless the judgment-debtor deposit the amount of the decree with costs in such Court to the credit of the person who has obtained the decree.

114. On the application of the person who has obtained the decree, the money in deposit shall be paid to him; but if the judgment-debtor appeal, and the appeal is decreed in his favour in whole or in part, notice shall be served on the original decree-holder requiring him to pay the money

aforesaid, or such portion of it as may be ordered to be refunded, into the public treasury within 14 days from the service on him of such notice.

115. In default of compliance with such notice, the sum referred to therein shall be deemed a demand under Bengal Act VII of 1868, and shall be recoverable from the decree-holder aforesaid as such.

116. No suit shall be entertained under section 110, except where it shall be shown to the satisfaction of the Court that rent at the same rate as that alleged to be due has been paid in respect of the holding for which it is claimed for the year immediately preceding the period during which it is claimed, or that the tenant has agreed by a written engagement, which is still in force, to pay rent at the rate claimed.

Nothing in section 110 shall be deemed to apply to suits for rent at enhanced rates.

117-118. Taken from sections 44 and 45 of Act VIII (B.C.) of 1869 as modified by the Bengal Bill.

117. In any suit hereafter to be brought for rent under the provisions of this Act, if it shall appear to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount due by him, and that he has not, before the institution of the suit, tendered such amount to the plaintiff or his duly authorized agent, or, in case of the refusal of the plaintiff or such agent to receive the amount tendered, has not deposited such amount with the Collector before the institution of the suit in the manner mentioned in sections 54 and 55, it shall be lawful for the Court to award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding 25 per centum on the amount of rent decreed, as the Court may think fit. These damages, if awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of 12 per centum per annum from the date of decree until payment thereof.

118. In any suit hereafter to be brought for rent under the provisions of this Act, if it shall appear to the Court that the plaintiff has instituted the suit against the defendant without reasonable or probable cause, or that the defendant had before the institution of the suit duly deposited with the Collector, in the manner mentioned in sections 54 and 55, the full amount which the Court shall find to have been due to the plaintiff at the date of such deposit, it shall be lawful for the Court to award to the defendant, by way of compensation, such sum, not exceeding 25 per centum on the whole amount claimed by the plaintiff, as the Court may think fit; and such sums, with interest at the rate of 12 per centum per annum until payment thereof, shall be recoverable from the plaintiff in like manner as sum ordered to be paid by decrees of such Court:

This proviso is new and will be required if section 104 becomes law. The principle involved is distinctly recognized in section 209, Code of Criminal Procedure.

Provided that, for the purposes of this section and section 117, each of the ryots or tenants, who may be joined together in any suit as one party under the provisions of section 104, shall, when so joined with others, be deemed to be a single defendant.

119. Taken from section 48 of Act VIII (B.C.) of 1869.

119. The defendant in any suit instituted under any of the provisions of this Act may, if he have duly tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as such defendant may consider to be due to the plaintiff, without paying in any costs incurred by the plaintiff up to the time of such payment, and such sum shall be immediately paid out of Court to the plaintiff. If after such payment the plaintiff elects to proceed in the suit and ultimately recovers no further sum than shall have been paid into

Court, the plaintiff shall be charged with the whole costs of the suit incurred by the defendant; but if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall be charged with the whole costs of the suit.

120. Taken from section 49 of Act VIII (B. C.) of 1869.

120. The defendant in any suit instituted under any of the provisions of this Act may, without having made any tender before action brought, pay into Court such sum of money as he shall consider to be due to the plaintiff together with the costs (to be fixed by the Court, if necessary, as of a suit originally instituted for the amount so paid into Court) incurred by the plaintiff up to the time of such payment, and such sum shall be immediately paid out of Court to the plaintiff. If after such payment the plaintiff elects to proceed in the suit and ultimately recovers no further sum than shall have been paid into Court, he shall be charged with all costs incurred by the defendant subsequently to such payment; but if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall be charged with costs as upon a suit originally instituted for the whole amount for which the plaintiff ultimately obtains a decree, but shall have credit thereout for the amount of costs paid into Court by him in the first instance.

121. Taken from section 50 of Act VIII (B. C.) of 1869, with an addition respecting a tenure held under a right of occupancy.

121. No warrant of arrest before judgment shall be issued in a suit for arrears of rent due in respect of a dependent talook or other transferable tenure which may he liable to sale in execution of any decree which may be passed in the case, or in respect of a tenure held under a right of occupancy.

122. Taken from section 51 of Act VIII (B. C.) of 1869.

122. It shall be lawful for any person entitled to recover the possession of land under any of the provisions of this Act to include in his plaint a claim for the mesne profits of the land.

123. Taken, with the exception of the proviso at the beginning, from section 52 of Act VIII (B. C.) of 1869.

Section 19 of the Bengal Act proposes to make ryots liable to ejectment under decrees for arrears of rent at any time of the year, but, for the reasons given in my Notes against section 39 of the present Bill, I think such an enactment would be unfair towards the ryots.

123. Subject to the provisions of sections 39 and 40, any person desiring to eject a ryot or to cancel a lease on account of non-payment of arrears, may sue for such ejectment or cancelment, and for recovery of the arrear in the same action or may adduce any unexecuted decree for arrears, of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of such suits for the ejectment of a ryot or the cancelment of a lease, the decree shall specify the amount of the arrears, and if such amount together with interest and costs of suit be paid into Court within 15 days from the date of the decree execution shall be stayed.

124. Taken generally from section 53 of Act VIII (B. C.) of 1869.

124. Whenever in any suit brought by any landholder or other person in receipt of the rent of land to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period, after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorised by any Regulation or Act, the Court shall pass a decree in favour of the plantiff; no application in the form provided in section 235 of the Code of Civil Procedure shall be necessary, but the Court shall forthwith, upon the plaintiff depositing in Court the necessary expenses, make an order for delivery of possession in execution of the decree: Provided, however, that no such order shall be made otherwise than in accordance with the provisions of sections 39 and 40.

125. It shall not be lawful for any Court to entertain any application for stay of execution of any such order pending any appeal, and no person who shall have been evicted under any such order shall be restored to possession so long as the decree under which such order was issued shall remain unreversed.

125. Taken from section 54 of Act VIII (B. C.) of 1869.

CHAPTER VII.—PROCEDURE IN EXECUTION OF DECREES IN SUITS.

126. When the decree is given for the delivery of a pottah, if the person required by the decree to grant such pottah refuse or delay to grant the same, the Court may grant pottah in conformity with the terms of the decrees under the signature and seal of such Court, and such pottah shall be of the same force and effect as if granted by the person aforesaid.

126. Taken from section 55 of Act VIII (B. C.) of 1869.

127. When a decree is given for the delivery of a kabuliyat, if the person required by the decree to execute such kabuliyat shall refuse to execute the same, the decree shall be evidence of the amount of rent claimable from such person, and copy of the decree under the signature and seal of the Court shall be of the same force and effect as a kabuliyat executed by the said person.

127. Taken from section 56 of Act VIII (B. C.) of 1869.

128. Process of execution in any suit instituted under this Act may be issued against either the person or the property of a judgment-debtor, but process shall not be issued simultaneously against both the person and property.

128. Taken from section 57 of Act VIII (B. C.) of 1869.

129. No process of execution of any description whatsoever shall be issued on a judgment in any suit for any of the causes of action mentioned in section 100, 101, 102, or 103 of this Act, after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding 500 rupees, in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the Court.

129. Taken from section 58 of Act VIII (B. C.) of 1869.

130. Whenever a decree may be passed for an arrear of rent due in respect of an under-tenure which by the title-deeds or this Act of the custom of the country (not inconsistent with any provision of this Act) is transferable by sale, and the judgment-creditor shall make application for the attachment and sale of such under-tenure, the Court shall, so soon as such under-tenure shall have been ordered to be sold, cause to be hung up in some conspicuous part of the building in which such Court sits and of the offices of the Collector and Judge of the District, within which the land comprised in such under-tenure is situate, and to be affixed on some conspicuous place in the town or village in or nearest to which such land is situate, a notice for the sale of such under-tenure on some fixed date not less than 20 days from the hanging up of such notice in such Court.

130. Taken from section 59 of Act VIII (B. C.) of 1869, with a slight modification designed to meet the requirements of the latter part of section 7 and Explanation II of section 9 of the present Bill.

131. Every such notice shall specify in the words used in the plaint in the suit in which the decree was made, the name of the village estate and pergunnah or other local division in which the land comprised in the said under-tenure is situated, the yearly rent payable under the said under-tenure, and the gross amount recoverable under the said decree.

131. Taken from section 60 of Act VIII (B. C.) of 1869.

132. No order for the sale of any such under-tenure shall be made in execution of a decree for

132. Taken from section 61 of Act VIII (B. C.) of 1869.

recovery of arrears of rent payable in respect thereof when a warrant of execution has been previously issued against the person or movable property of the judgment-debtor, so long as such warrant remains in force. If, after sale of any such under-tenure in execution of such decree, any portion of the amount decreed remains due, process may be applied for, and issued against, any other property, movable or immovable, belonging to the debtor.

133. Taken from section 62 of Act VIII (B.C.) of 1869.

133. If the sum due under the decree, together with interest to date of payment, and all costs of process, be paid into Court at any time before the sale commences, whether by the defaulting holder of the under-tenure, or any one on his behalf, or any one interested in the protection of the under-tenure, such sale shall not take place; and the provisions of section 13 of Regulation VIII of 1819 for the recovery of sums paid by person other than the defaulting holder of the under-tenure, to stay the sale of the under-tenure, shall be applicable to all similar payments made under this section.

134. Taken from section 63 of Act VIII (B.C.) of 1869.

134. If, after attachment and before sale of any such under-tenure as aforesaid in execution of a decree for arrears of rent due in respect of such under-tenure, any third party may prefer a claim alleging that such third party and not the person against whom the decree has been obtained is the proprietor of such under-tenure, and was in lawful possession of the same at the time when such decree was obtained, the Court shall not postpone such sale, unless and until such third party shall have deposited in Court the amount of the decree, or given sufficient security for the same: Provided that no transfer of an under-tenure which, by the provisions of this Act or any other law for the time being in force, is required to be registered in the serishtah of the proprietor or superior tenant, shall be recognised unless it has been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Court.

135. Taken from section 64 of Act VIII (B.C.) of 1869.

135. If a decree be given in favour of a sharer in a joint undivided estate, dependent talook, or other similar tenure, for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate, talook, or tenure, no order for the sale of such under-tenure in execution of such decree shall be made unless and until all movable property (if any) which such judgment-debtor may possess within the jurisdiction of the Court in which the suit was instituted shall have proved insufficient to satisfy the judgment. In such case such under-tenure, if of the nature described in section 130, may be seized and sold in execution of such decree, according to the ordinary procedure of the Court, and not in the manner provided in the said section, and every such sale shall have such and the same effect as the sale of any immovable property sold in execution of a decree not being for arrears of rent payable in respect thereof.

136. Taken from section 65 of Act VIII (B.C.) of 1869.

136. In the execution of any decree for the payment of any money under this Act, not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or movable property of the debtor within the district in which the suit was instituted, the judgment-creditor may apply for execution against any immovable property belonging to such debtor.

137. Taken from section 66 of Act VIII (B.C.) of 1869.

137. The purchaser of an under-tenure under the provisions of sections 130 and 131 of this Act

shall acquire it free of all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created, or by the subsequent written authority of the person who created it, his representatives or assignees: provided that nothing herein contained shall be held to entitle the person to eject resident ryots or occupancy ryots, nor to cancel *bonâ fide* engagements made with such ryots by any holder of the under-tenure or his representatives, except it be proved in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rent would have been demandable at the time such engagements were contracted by his predecessor. Nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof, through whose default the tenure was brought to sale.

The words "resident ryots or occupancy ryots" have been substituted for "khoodkhast ryots or resident and hereditary cultivators."

138. The purchaser of an under-tenure sold under this Act shall apply to the proprietor or other landholder within 15 days from the day of sale to have his name registered in the proprietor or other landholder's books as the purchaser, and shall execute a kabuliyat on the same terms and conditions on which the under-tenure was held by the defaulter; and if such application be not made within 15 days, it shall be lawful for the proprietor or other landholder to sue the said purchaser for the delivery of a kabuliyat.

138. Taken from section 67 of Act VIII (B. C.) of 1869.

CHAPTER VIII.—MISCELLANEOUS.

139. Nothing in this Act contained shall be deemed to confer any power of appeal in any suit tried and decided by a District Judge, originally or in appeal, if the amount sued for, or the value of the property claimed, does not exceed 100 rupees, in which suit a question of right to enhance or vary the rent of a ryot or tenant, or any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto, has not been determined by the judgment.

139. Taken from section 102 of Act VIII (B. C.) of 1869.

140. No application for a review of any judgment or order passed in any suit brought under the provisions of this Act shall be received by any Court after the expiration of 30 days from the date of such order or judgment, but nothing in this section contained shall be deemed to apply to the High Court of Judicature at Fort William in Bengal.

140. Taken from section 103 of Act VIII (B.C.) of 1869.

141. Nothing in this Act contained shall be deemed to confer upon any Court, sitting as a Court of Small Causes cognisance of suit brought under the provisions of this Act, of which it would not have had cognizance if this Act had not been passed.

141. Taken from section 104 of Act VIII (B.C.) of 1869.

142. If in any case the Court is satisfied that a party is unable to pay the cost of any necessary process in any suit under this Act, it may direct such process to be served free of charge.

142. Taken from section 105 of Act VIII (B.C.) of 1869.

143. Every order passed by any officer subordinate to the Collector of a district shall be subject to revision and modification by the Collector; but every order passed by the Collector except under sections 44 and 94 shall be final, and not open to revision or modification by any superior revenue authority.

143. This section is new. It seems undesirable that in the purely executive matters with which revenue officers are empowered to deal a system of appeals should be allowed. The delay and expenses involved by such a system would defeat most of the objects of the law. At the same time, I think, the Collector of a district should have power to interfere when necessary.

Explanation.—"The Collector" in this section means the chief officer in charge of the revenue administration of a district.

144. Taken from section 12 of Act VIII (B.C.) of 1869.

144. All power at any time heretofore vested in zemindars and other landholders of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose is withdrawn; and all such persons are prohibited from adopting any means of compulsion for enforcing payment of the rents due to them, other than by suit or distress or otherwise under the provisions of this Act.

SCHEDULE A (*referred to in section* 55).

I, A.B., of, &c., do solemnly declare that I did personally (or by my Agent, C. D.) on the day of tender payment to E.F. at his mál cutcherry (or) the place where the rent of the lands at held or cultivated by me under or from the said E. F. is usually payable of the sum of Rupees as and for the whole amount due from me in respect of the rent of the said lands from the month of to the month of both inclusive. I further declare that the said E. F. refused to accept the said sum so tendered or to give me a receipt in full forthwith for the same; and I do declare that, to the best of my belief, the sum of Rupees so tendered, and which I now desire to deposit with the Collector, is the full amount which I owe the said E. F. on account of the rent of the said lands from the month of to the month of both inclusive, and that I owe the said E. F. no further sum on account of the rent of the said lands.

SCHEDULE B (*referred to in section* 55).

COURT OF

Dated the *day of* 187 .

To E. F. of, &c.

WITH reference to the written declaration, you are hereby informed that the sum of Rupees therein mentioned is now in deposit in this Court, and that the above sum will be paid to you or to your duly authorized agent on application; and take notice that if you have any further claim or demand whatsoever to make against the said A. B. in respect of the rent of the said lands, you must institute a suit in the Civil Court for the establishment of such claim or demand within six calendar months from this date, otherwise your claim will be for ever barred.

(Copy of declaration in Schedule A to be annexed).

SCHEDULE C (*referred to in section* 69).

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

COURT (OR OFFICE) OF

A. B. DISTRAINER.

(Name, description, and address of the owner of the property).

WHEREAS the said A. B. has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said A. B., or to institute a suit in the Civil Court of to contest the demand within 15 days from the receipt of this notice, failing which the property will be sold.

Dated this *day of* 187 .

SCHEDULE D (*referred to in section* 110).

NUMBER OF SUIT.

IN THE COURT OF AT

Plaintiff.
Defendant.

To

WHEREAS (here enter plaintiff's name, description, and address) has instituted a suit in this Court against you under Bengal Act , 1879, for Rs. , principal and interest due to him as arrears of rent of the lands measuring , situate in , held or cultivated by you under or from the said (here enter plaintiff's name) from the month of to the month of , both inclusive, at a rental of Rs. per annum, you are hereby summoned to obtain leave from this Court within 14 days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled to obtain a decree for any amount not exceeding the sum of Rs. (here state the sum claimed) and the sum of Rs. for costs.

Leave to appear may be otbained on its being shown to the satisfaction of the Court that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

MEMORANDUM.

My principal object in framing this Bill has been to bring together in a convenient shape and under their proper heads the most approved suggestions which have been made for the amendment of the Rent Law in Behar, and thus to provide some solid basis for discussion by the Rent Committee at their meetings. In pursuing this object I have not hesitated to discard the awkward intermixture of subjects displayed in the Bengal Acts, and to adopt the scientific and lucid arrangement of the North-Western Provinces Rent Act. I have also gladly availed myself of such provisions of this excellent Act as seem well-suited to Behar, and have further ventured to insert several propositions which have suggested themselves to me in the course of my labours. Much of my work has been mere transcribing of sections, but if we are to have (as we want) a complete Rent Act for Behar, such work cannot be omitted by the Committee.

Some of the points enumerated in Government letter No. 2122, dated 7th September 1878, I have treated very briefly. The questions of improving the system of keeping village accounts and of cheapening registration are matters which can be better dealt with executively than by the Legislature, and section 106 of the Bill enables the Government to take action in the one case while section 78 of the Indian Registration Act, 1877, empowers the Government to prescribe and alter from time to time the fees for registration. On these two points, therefore, it seems to me that an expression of their opinion by the Committee will be sufficient. On all other points definite provisions will be found in the Bill.

I may say here that, in my opinion, the replacement of Rural Registrars by Deputy or Sub-Deputy Collectors in every thana jurisdiction would be the very best measure that could be adopted by the Government. Local supervision of putwaris, the sale of distrained property, and the valuation of crops under the Batai or Danabundi system could be most efficiently carried out by such officers. Nothing is more needed in Behar than the creation of appointments corresponding in some degree to those of tehsildars in the North-Western Provinces.

The provisions regarding occupancy rights, enhancement of rents, leases for common ryots valuation of crops, joinder of plaintiffs, or defendants exercise of distraint, and summary trials, deserve the most careful consideration.

Mozufferpore.
The 16*th October* 1878.

C. F. WORSLEY.

ACT No. VIII of 1869.

Passed by the Lieutenant-Governor of Bengal in Council.

(*Received the assent of the Lieutenant-Governor on the* 21*st August* 1869, *and of the Governor General on the* 15*th October* 1869.

An Act to amend the procedure in suits between Landlords and Tenants.

Preamble.

Whereas it is expedient to amend the procedure in suits between landlords and tenants in the provinces subject to the Lieutenant-Governor of Bengal; It is enacted as follows;—

Interpretation of "Collector."

1. In the construction of this Act the word "Collector" shall include a Deputy Collector in charge of a sub-division or other officer exercising the powers of a Collector of a district or of a Deputy Collector in charge of a sub-division by whatever designation such officer may be called.

The Behar Rent Act, 1878.

Preamble.

Whereas it is expedient to amend and consolidate the procedure between landlords or other persons in receipt of rent and tenants in Behar; It is enacted as follows:—

Section 1—

Interpretation-clause.

In the construction of this Act the word (*a*) "Collector" shall include a Deputy Collector in charge of a sub-division, or other officer exercising the powers of a Collector of a district or of a Deputy Collector in charge of a sub-division, by whatever designation such officer may be called.

(*b*) Except where the context especially denotes the contrary, the singular shall include the plural.

(*c*) "Rent" means whatever is to be paid, delivered, or tendered by a tenant on account of his holding, use, or occupation of land.

(*d*) "Landlord or proprietor" means any person having a permanent transferable interest in any land and recorded as a proprietor in the Collector's registers under the provisions of the Registration of Estates Act, 1876.

2. Every ryot is entitled to receive, from the person to whom the rent of the land held or cultivated by him is payable, a pottah containing the following particulars :—

Ryots entitled to a pottah.

The quantity and boundaries of the land; and, where fields have been numbered in a Government survey, the number of each field.

The amount of annual rent.

The instalments in which the same is to be paid.

If the rent is payable in kind, the proportion of produce to be delivered and the time and manner of delivery.

And any special conditions of the lease.

(*e*) "Person in receipt of rent" means a landlord or proprietor or the lawful assignee of a landlord or proprietor.

Explanation.—A thikadar is a "person in receipt of rent" within the meaning of this section : provided the right to collect rents has been lawfully assigned to such thikadar, and provided the assigning proprietor had himself, at the time of assignation, the right to collect such rents.

(*f*) "Person in receipt of rent" includes a partnership or number of persons in receipt of rent.

(*g*) "Kist or instalment of rent" means the entirety of the quota of rent due on any specified date in respect of the whole of the land occupied.

(*h*) "Khamar," "nij-jote," "sir land" or "*zirat*" means land continuously cultivated for 12 years by the proprietor or other person in receipt of rent, with his own stock, or by his servants, or by hired labour at his expense :

or land recognized by village custom as the special holding of a zemindary co-sharer, and treated as such in the distribution of profits and charges among the co-sharers.

"Middleman or thikadar" means any person to whom a landlord or proprietor of an estate, or part of an estate, leases out for a limited period, the right to collect rents from the cultivating ryots of such estate or part of an estate, whether the consideration for such lease be a bonus, salamee or zurpeshgi, or any other consideration.

Section 2 (amended)—

Every ryot is entitled to receive, from the person to whom the rent of the land held or cultivated by him is payable, a pottah containing the following particulars :—

(*a*) The quantity and boundaries of the land held by him, and of each field therein, and where fields have been numbered in a Government or other survey the index number of each field.

(*b*) The amount of the annual rent of the entire holding and of each field therein, the rate per local beegha, and the length of the measuring pole expressed in cubits and also in feet or inches.

(*c*) The proportion which each instalment of rent shall bear to the whole rent, and the date on which each instalment shall be due.

(*d*) If the rent is payable in kind, the proportion of the produce to be delivered and the term and manner of delivery.

(*e*) Any special conditions of the lease.

Explanation.—A pottah which in addition to the particulars specified in clauses *a*, *b*, *c*, and *d* of this section also defines the status of the ryot's holding, or which sets forth any special conditions of the lease, may be called a "complete pottah." A complete pottah may be executed on such conditions as the parties may have voluntarily arranged among themselves, *or* on such conditions as may have been determined by a competent court in regular suit.

Section 2 (A)—

Every person claiming the right to receive rent shall be bound to tender to every ryot from whom he claims rent a "*chitta or memorandum of tenure*" containing not less than the particulars specified in clauses *a*, *b*, *c*, and *d* of section 2.

Ryots holding land at fixed rates to receive pottahs.

3. Ryots who, in any province to which this Act may apply, hold lands at fixed rates of rent, which shall not have been changed from the time of the Permanent Settlement of such province, are entitled to receive pottahs at those rates.

Presumption if rent of land be not changed for 20 years.

4. Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a ryot in any such province has not been changed for a period of 20 years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

Ryots having right of occupancy, but not holding at fixed rates, to receive pottahs.

5. Ryots having rights of occupancy, but not holding at fixed rates as described in the two preceding sections, are entitled to receive pottahs at fair and equitable rates. In case of dispute, the rate previously paid by the ryot shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

Right of occupancy of ryot cultivating or holding land for 12 years.

6. Every ryot who shall have cultivated or held land for a period of 12 years shall have a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khamar, nij-jote, or sir land belonging to the proprietor of the estate or tenure and let by him on a lease for a term, or year by year, nor (as respects the actual cultivator) to land sublet for a term, or year by year, by a ryot having a right of occupancy. The holding of the father or other person from whom a ryot inherits shall be deemed to be the holding of the ryot within the meaning of this section.

Explanation.—Chittas under this section may be called incomplete pottahs, and are required in all instances in which complete pottas have not been tendered and accepted.

Section 2 (B)—

Every person claiming any share in the rent payable by a cultivating ryot is bound to ensure such ryot in peaceable possession of the whole of his holding throughout the period in repect of which rent is claimed undisturbed by force, or show of force, on the part of the rent claimant himself, or on the part of a arrival rent claimant, or on the part of any person claiming possession through such rent claimant or rival rent claimant.

Section 3 (C)—

Any rent claimant who fails to ensure a ryot in peaceable possession of his holding as prescribed in section 2 (B) shall, in addition to any other penalty to which he may be liable, forfeit all claim to the rent of such holding in respect of the year in which the ryot's possession in the whole or any part of his holding was disturbed.

Explanation.—Nothing in this section shall affect the right of distraint as defined in sections to of this Act.

Section 6 (A)—

An occupancy right is perpetual, hereditary, and transferable.

Section 6 (B)—

Every khoodkhasht resident ryot who has cultivated or held any land continuously for 12 years in any village or estate shall be presumed, till the contrary is proved, to have occupancy rights in the whole of the land which he occupies in that village or estate. The holding and residence of a father or other person from whom a ryot inherits shall be deemed to be the holding and residence of the ryot within the meaning of this section.

Section 6 (C)—

Every thikadar, middleman, or other person who contracts for the right to collect rents in any village or part of a village for a limited term of years shall be bound, on the expiration of such term, to surrender to his lessor all lands, whether ryotti or nij-jote or *zirat*, acquired in such leased village, or leased part of a village, during the currency of the lease, otherwise than by purchase at sale in execution of a decree. On refusal to surrender such lands to his lessor at the expiry of his lease, the ex-thikadar may be treated as a trespasser.

Saving of terms of written contracts.

7. Nothing in the last four preceding sections shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot, when it contains any express stipulation contrary thereto.

Pottahs to which ryots not having rights of occupancy are entitled.

8. Ryots not having rights of occupancy are entitled to pottahs only at such rates as may be agreed on between them and the persons to whom the rent is payable.

If, on trial of suit for delivery of pottah, parties do not agree as to the time for which the pottah is granted, Court to fix the time.

Proviso.

9. If, on the trial of a suit for the delivery of a pottah instituted by a ryot having a right of occupancy the parties do not agree as to the term for which the pottah is to be granted, the Court shall fix such term as under the circumstances of the case may seem just and proper: provided that the term shall not in any case be longer than ten years, and, in estates not permanently settled, shall not extend beyond the period for which the proprietor of the estate has engaged with Government: provided also that, if the defendant be a farmer or other person having only a temporary interest in the land, the term of the pottah shall not extend beyond the period of the continuance of such interest. For cultivators not having a right of occupancy, the term of pottah shall be exclusively in the discretion of the person entitled to the rent of the land.

Persons granting pottah entitled to a counterpart engagement.

10. Every person who grants a pottah is entitled to receive, from the person to whom the pottah is granted, a kabuliyat or counterpart engagement in conformity with the terms of the pottah. The tender to any ryot of a pottah such as the ryot is entitled to receive shall be held to entitle the person to whom the rent is payable to receive a kabuliyat from such ryot.

Explanation.—A kabuliyat shall be deemed a complete or incomplete kabuliyat according as the pottah of which it is a counterpart is a complete or incomplete pottah as defined in sections 2 and 2 (A).

Section 10 (A).

Every ryot to whom a chitta has been tendered in accordance with the provisions of section 2(A) shall be bound to give a counterpart in conformity with the terms of the chitta: Provided—

firstly, that no ryot shall be bound to accept a chitta or to give a counterpart otherwise than in accordance with a decree of the Court if such chitta or counterpart contain any conditions or particulars other than those specified in section 2 (A) and this section respectively:—

secondly, that no occupancy ryot shall be bound, otherwise than in accordance with a decree of the Court, to accept a chitta or give a counterpart at rates higher than those paid by him in the previous year:

thirdly, that no non-occupancy ryot shall be bound otherwise than in accordance with a decree of the Court to accept a chitta or give a counterpart at rates higher than those previously paid by him, except after notice of enhancement served in writing in the manner provided in section 14 of this Act:

fourthly, provided also that the tender and acceptance of a chitta and the giving of a counterpart shall not affect the status and rights of the ryot in particulars other than those expressly set forth in the chitta and counterpart.

Section 10 (B)—

If any ryot, to whom a chitta has been tendered in accordance with the provisions of section 2 (A), refuse to give such counterpart as under the provisions of the last preceding section he is bound to give the proprietor or other person in receipt of rent, shall serve notice of such refusal on the Court in the form prescribed in the Appendix [A].

Section 10 (C)—

The Court, on receipt of such notice, shall call upon the ryot or under-tenant to show cause why he should not accept the chitta tendered, and give a counterpart in conformity with the terms thereof. If the ryot or under-tenant fail to show cause, the Court shall grant a counterpart under its seal and signature. Such counterpart shall have the same force and effect as if executed by the ryot or under-tenant himself. The chitta of which the Court has executed the counterpart kabuliyat under this section, shall be filed in the Court, and shall have the same force and effect as if it had been accepted by the ryot.

Explanation (1).—No ryot is bound, under section 10 (A), 10 (B), or 10 (C) to give a kabuliyat other than an incomplete (or provisional) kabuliyat.

Explanation (2).—Nothing in section 10(A), 10(B), or 10(C) shall affect the right of a zemindar or other person in receipt of rent to obtain, by a regular suit, a complete kabuliyat, or shall affect the right of a ryot to obtain, by a regular suit, a complete pottah.

Section 11 (A)—

Tenders of rent may be made in the form given in Section 11 (B)—in the Appendix [B].

Receipts shall be in counterfoil in the form prescribed in Appendix [C] to this

Damages for exactions in excess of rent or for receipt withheld.

Form of receipts.

11. Every under-tenant or ryot, from whom any sum is exacted in excess of the rent specified in his pottah, or payable under the provisions of this Act, whether as abwab or under any other

pretext, and every under-tenant, ryot, or cultivator from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so exacted or paid. Receipts for rent shall specify the year or years on account on which the rent is acknowledged to have been paid; and any refusal to make such specification shall be held to be a withholding of a receipt.

Landholder not to compel the attendance of tenant for adjustment of rent or for any other purpose.

Payment of rent to be enforced under this Act.

12. All power at any time heretofore vested in zemindars and other landholders of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose is withdrawn, and all such persons are prohibited from adopting any means of compulsion for enforcing payment of the rents due to them, other than by suit or distress, or otherwise under the provisions of this Act.

Damages for extorting payment of rent by duress.

13. If payment of rent, whether the same be legally due or not, is extorted from any under-tenant or ryot by illegal confinement or other duress, such under-tenant or ryot shall be entitled to recover such damages, not exceeding in any case the sum of two hundred rupees, as may be deemed a reasonable compensation for the injury done him by such extortion. An award of compensation under this section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law.

Enhancement of rent of ryot holding without or after expiry, &c., of written engagements.

14. No under-tenant or ryot, who holds or cultivates land without a written engagement, or under a written engagement not specifying the period of such engagement, or whose engagement has expired or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or ryot, in districts or parts of districts where the Fusli year prevails, *in or before the month of Jeyt, and in districts or parts of districts where the Bengali year prevails, in or before the month of Pous, specifying the rent to which he will be*

Act. Such receipts shall bear serial numbers for each year in respect of each separate estate; or where an estate comprises two or more villages, serial numbers for each village, the accounts of which are kept by one registered putwari; such receipts shall be signed by the putwari and also by the landlord or his agent. The counterfoil part shall be signed by the putwari and may be signed by the ryot. The refusal or neglect on the part of the landlord or his agent to comply with the foregoing provisions shall be deemed to be a withholding of a receipt. No document purporting to be a receipt or counterfoil receipt shall be admissible in evidence, except such document is drawn up in conformity with the requirements of this section.

Section 11 (C)—

Loose sheet of paper produced from the putwari's or zemindar's office, and purporting to be counterfoil receipts, or to be *jummabundies* or *jumma-wasil-bakees*, or other papers of the kind not being written in bound volumes, are not books kept in the regular course of business as defined in section 32 or 34 of the Evidence Act. Such loose sheets shall not be admissible in evidence in any suit under this Act, except with the consent of both of the parties to the suit.

Section 14 (amended)—

Enhancement of rent of ryot holding without, or after expiry, &c., of written engagements.

No under-tenant or ryot, who holds or cultivates land without a written engagement, or under a written engagement not specifying the period of such engagement, or whose engagement has expired or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall be served on such under-tenant or ryot in districts or parts of districts where the Fusli year prevails in or before the month of Jeyt, and, in districts where the Bengali year prevails, in *subject for the ensuing year*, and the ground on which an enhancement of rent is claimed. Such notice shall be served by order of the Collector in whose jurisdiction the lands are situate, on the application (which may be on plain paper) of the person to whom the rent is payable; and shall, if practicable, be served personally upon the under-tenant or ryot. If for any reason the notice cannot be served personally upon the under-tenant or ryot, it shall be affixed at his usual place of residence; or if he have no such place of residence in the district in which the land is situate, the mode of service of such notice shall be by affixing it at the mal-cutcherry of such land or other conspicuous place thereon, or at the village chowrie or chowpal, or at some other conspicuous place in the village in which the land is situate.

Mode of contesting enhancement of rent.

15. Any under-tenant or ryot, on whom such notice as aforesaid has been served, may contest his liability to pay the enhanced rent demanded of him either by complaint of excessive demand of rent as hereinafter provided, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent.

Dependent talookdar, &c., holding land at fixed rent without change since Permanent Settlement not liable to enhancement of rent.

16. No dependent talookdar, or other person possessing permanent transferable interest in land intermediate between the proprietor of an estate and the ryot who, in any province to which the provisions of this Act may apply, holds his talook or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement, shall be liable to any enhancement of such rent, anything in section 51, Regulation VIII of 1793, or in any other law, to the contrary notwithstaning.

Rent of talookdar, &c., not changed for 20 years, to be *primâ facie* evidence of occupancy at that rent since the Permanent Settlement.

17. Whenever in any suit under this Act, it shall be proved that the rent at which a talook or other tenure is held in the said provinces has not been changed for a period of 20 years before the commencement of the suit, it shall be presumed that such talook or tenure has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period.

Grounds on which ryot having right of occupancy is liable to enhanced rent.

18. No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely—

That the rate paid by him is below that prevailing in adjacent places.

That the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages *in the places adjacent*.

or before the month of Pous, specifying the rent to which *he will be subject after the next ensuing year*, the ground or grounds on which an enhancement of rent is claimed, and the particulars alleged in support of the same. The notice required under this section must be served at least 12 months before the date from which the enhancement is to take effect. Such notice shall be served by the Civil Court in the same way as a summons under the Civil Procedure Code. The provisions of sections 72 to 92 of the Civil Procedure Code shall govern service of notice under this section.

Section 14 (A)—

Every application to the Court for service of notice under the last section shall bear court fees as in a civil suit. Such fees shall be assessed on the capitalized value of the proposed enhancement.

Section 15 (amended)—

Any under-tenant or ryot on whom such notice as aforesaid has been served may within three months of the service of notice contest his liability to day the enhanced rent demanded of him. In the event of the under-tenant or ryot failing to contest the demand, the Court may, on satisfactory proof of the service of notice, proceed to enquire into the grounds of enhancement with reference to section 18 of this Act, and if satisfied thereon may decree prospectively at such rates as to the Court may seem proper.

Section 18 (amended)—

Ground on which ryot having right of occupancy is liable to enhanced rent.

No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him except on some one of the following grounds, namely,—

That the rate paid by him is below that prevailing in adjacent places.

That the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar ad-

That the value of the land, &c., has increased independently of the ryot.

That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

That the quantity of land held by the ryot is greater than he has paid rent for.

That the quantity of land held by the ryot has been proved *by masurement* to be greater than the quantity for which rent has been previously paid by him.

When ryot may claim abatement of rent.

19. Every ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of land have been decreased by any cause beyond the power of the ryot, or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

Relinquishment of land by ryot after notice given.

20. Any ryot, who desires to relinquish the land held or cultivated by him, shall be at liberty to do so: provided he gives notice of his intention, in writing, to the person entitled to the rent of the land or his authorized agent, in districts or parts of districts where the Fusli year prevails, in or before the month of Jeyt, and in districts or parts of districts where the Bengali year prevails, in or before the month of Pous, of the year preceding that in which the relinquishment is to have effect. If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land. If the person entitled to the rent of the land, or his agent, refuse to receive any such notice, and to sign a receipt for the same, the ryot may make an application on plain paper to the Collector in whose jurisdiction the lands are situate, who

vantages in the same village, *or in a village immediately bounding that in which the land is situated.*

That the value of the land, &c., has increased independently of the ryot.

That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

That the quantity of land held by the ryot is greater than he has paid rent for.

That the quantity of land held by the ryot has been proved *by measurement with the same standard* to be greater than the quantity for which rent has been proviously paid by him.

Section 18 (A)—

Any rate of rent decreed after enhancement suit and any measurement of land accepted by both parties shall be binding on such parties for not less than ten years, and shall not be liable to revision during that period.

Section 18 (B)—

No ryot's rent shall be liable to enhancement except at the suit of a landlord or other person having a permanent transferable interest in the land, the rent of which it is sought to enhance—(Sir S. Bayley's recommendation).

Section 18 (C)—

If any landlord or other person with a permanent transferable interest in land to whom the rent of such land is payable shall lease out the right to collect rent to a thikadar or other lessee for a limited period, the landlord or other person aforesaid shall not be entitled during the term of the lease to sue under this Act any ryot or under-tenent, the right to collect whose rent he has leased out to a thikadar or other person as aforesaid —(Sir S. Bayley.)

shall thereupon cause the notice to be served on such person or his agent in the manner provided in section 14.

What to be deemed an arrear of rent under this Act.

21. Any instalment of rent which is not paid on or before the day when the same is payable according to the pottah or engagement, or if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage, shall be held to be an arrear of rent under this Act, and unless otherwise provided by written agreement shall be liable to interest at 12 per centum per annum.

Section 21 (amended)—

All rent of land payable by any ryot or under-tenant shall, for the purposes of this Act, be deemed to be due on the dates specified below, that is to say—

First—

When the ryot and the person in receipt of rent have voluntarily entered into an agreement in writing specifying the amount of each instalment, and the date on which such instalment is due the dates so agreed upon shall be the due dates.

Second—

When no such agreement in writing has been made, rent shall be deemed to be due in three instalments to be fixed by the Collector for each pergunnah of the district after local inquiry with reference to the custom of the pergunnah and crops grown.

The Collector in determining the proportion of instalments under this section shall take the following circumstances into consideration:—

(*a*) the average amount and value of the crops at each harvest;

(*b*) the average amount and value of the produce which the tenant retains for his own consumption at each harvest period;

(*c*) the average amount and value of the produce which the tenant disposes of in the market at each harvest period;

(*d*) the expenditure in cash or grain which the tenant is obliged to incur at or about each harvest period.

The Collector, in fixing the dates on which each instalment shall be due, shall take the following circumstances into consideration, namely,—

(*a*) the time of harvesting the bhadoi crops;

(*b*) the time of harvesting the rubbee crops;

(*c*) the time of harvesting the aghani crops;

(*d*) the time of harvesting any special crops, such as sugarcane, indigo, &c.

The Collector, in fixing the dates on which instalments of rent shall be due, shall allow not less than 15 (or 30) days between the usual harvesting time of the bhadoi, rubbee, and aghani or other crops, and the due dates of the instalments ordinarily liquidated from these crops respectively.

The proportion and due date of each instalment as fixed by the Collector shall be published by him by notification in the *Calcutta Gazette* and by notices to be posted up at the court or office of the Judge, Magistrate, the Collector of the district; also—

At the court or office of every Moonsiff, Sub-Divisional officer, and Sub-Registrar of Assurances in such district and at every police-station in such district, and by beat of drum in the head-quarters of each district and sub-division of a district. It shall be also announced to such persons and in such other manner as may be prescribed by the Lieutenant-Governor of Bengal.

All rent which shall be due and shall remain unpaid by sunset on any of the said due dates shall be deemed to be an arrear of rent, Liability of ryot to be ejected for arrear due.

22. When an arrear of rent remains due from any ryot at the end of the Bengali year, or at the end of the month of Jeyt of the Fusli or Willayuttee year, as the case may be, such ryot shall be liable to be ejected from the land in respect of which the arrear is due: Provided that no ryot having a right of occupancy, or holding under a pottah the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

and interest on the same at the rate of 12 per cent. per annum may be awarded by any court giving a decree for the principal amount of the arrear in a suit on application under this Act: provided that no ryot shall under any circumstances be liable to pay compound interest on an arrear of rent under this Act. (N.-W. P. and Oudh Acts.)

Section 21 (A)—

Any proprietor or other person in receipt of rent who demands an instalment or part of an instalment of rent before the due date, shall be liable to refund such instalment or part of instalment, if realized, and shall be also liable to pay interest thereon at 12 per cent. per annum.

Section 22 (A)—

If any landlord or other person in receipt of rent desire to eject a tenant not having a right of occupancy, he shall cause a written notice of ejectment to be served on such tenant under the provisions of this Act.

Section 22 (B)—

Such notice of ejectment shall be written in the vernacular language and character of the district. It shall specify the land from which the tenant is to be ejected, and it shall inform such tenant that he must evacute such land on or before the first day of the next ensuing Fusli year or Bengali year, as the case may be, and that if he means to contest the right to eject, he must apply to the Court for that purpose on or before that date.

Section 22 (C)—

The notice shall be issued and served through the Court not less than three months before the beginning of the Fusli or Bengali year, as the case may be, and the landlord or other person seeking to eject shall pay the cost of service. The notice shall be served personally on the tenant if practicable; but if he cannot be found, service may be made by affixing the notice to his usual place of residence.

Section 22 (D)—

(a) the tenant on whom such notice has been served may, at any time within two months of receipt of such notice, make an application to the Court contesting his liability to be ejected;

(b) when such application has been made the Court shall proceed to determine the question between the parties;

(c) if no such application has been made, the tenancy of the land in respect of which the notice has been served, shall be held to cease on the first day of the Fusli or Bengali year, as the case may be, next after the service of notice; unless subsequently to such service the landlord or other person in receipt

of rent authorise the tenant to continue in the occupation of the land.

Section 22 (E)—

If a landlord or other person in receipt of rent require assistance to eject a ryot or under-tenant whose tenancy has ceased under the provisions of this Act, he may apply for such assistance to the Court, and the Court shall order the ejectment of such tenant if it be satisfied—

(a) that notice of ejectment was duly served;

(b) that the tenant has not been authorized by the landlord or other person in receipt of rent to continue in occupation of the land after service of notice;

(c) that the tenant has not made the application mentioned in section 22 (D);

(d) that if such application has been made the question has been determined adversely to the tenant.

Explanation (1).—Nothing in this section shall apply to a thikadar or farmer on the determination of a lease if the lease be of a kind in which an advance has been made by the leaseholder, and the lessor's right of re-entry on the determination of the lease is contingent on the re-payment of such advance. In all such cases the lessor must proceed by regular suit in the Civil Court.

Explanation (2).—Landlords or other persons on receipt of rent are not entitled to eject non-occupancy ryots otherwise than in compliance with the foregoing provisions.

Section 22 (F)—

If the landlord or other person in receipt of rent expressly authorize the tenant on whom notice of ejectment has been served, or against whom any proceedings in ejectment have been taken, to remain in occupation of the land, the proceedings shall thereupon become void.

Section 22 (G)—

(*a*) Any tenant ejected in accordance with the provisions of this Act shall be entitled to any growing crops or other way-going products of the earth growing on the land at the time of his ejectment, and to use the land for the purpose of gathering in such crops or products, paying adequate rent therefor:

(*b*) Provided that if the landlord or other person in receipt of rent desire to purchase such crops or products, he may tender their price to the tenant, and thereupon the right of the tenant to such crops or other products and to the use of the land shall cease:

(*c*) In case of a dispute under this section, the Court may, on the application of the landlord or other person in receipt of rent or of the tenant, award the rent and price so payable. The amount of such award or of any tender accepted under this section shall be recoverable in the same manner as an arrear of rent.

(*d*) The rent (if any) payable to the landlord or other person in receipt of rent may be set off against the price of the said crops or products.

Section 22 (H)—

(*a*) Wherever rent is payable by division of the produce in kind or by estimate or appraisement of the standing crop, or other procedure of a like nature requiring the presence both of the cultivator and of the person in receipt of rent, either personally or by agent—

If either the cultivator or the person in receipt of rent personally or by agent neglect to attend at the proper time, or if there is a dispute as to the amount of value of the crop,

an application may be presented by either party to the Court (*or to the Collector of the district or Sub-Divisional Officer*) requesting that a proper officer be deputed to make the division, estimate, or appraisement.

(*b*) On receipt of such application the Court (*or Collector or Sub-Divisional Officer*) shall issue a written notice to the opposite party to attend on the date and at the time and place specified in the notice, and shall depute an officer before whom such division, estimate, or appraisement shall be made.

(*c*) If on or before the date appointed the dispute has not been amicably settled, three residents of the villiage or neighbourhood shall be appointed assessors. One shall be nominated by each of the parties, and one by the officer deputed to divide the grain, or estimate or appraise the crops; the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops.

(*d*) If either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

(*e*) The officer deputed shall report his proceedings to the Court (*or Collector or Sub-Divisional Officer*) which (or who?) shall confirm or modify such order in such manner as to it (or him) may seem fit.

(*f*) The Court (or Collector) shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

Section 22 (I)—

Orders passed by the Court (*or* by the Collector or Sub-Divisional Officer) shall be final. Nothing done by the Court (*or* Collector or Sub-Divisional Officer) or by any person deputed to divide, estimate, or appraise crops under the provisions of the foregoing section, shall render such Court (*or Collector or Sub-Divisional Officer*) liable to a civil suit for damages.

Section 22 (J)—

If any tenant, or any person from whom he has inherited or purchased, make any such improvements on the land in his possession as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land without payment of compensation for such improvements.

Explanation.—The word "improvements" as used in this section means works by which the annual letting value of the land has been and continues increased at the time of demanding compensation, and comprises—

(*a*) Tanks, wells, or other works for the storage, supply or distribution of water for agricultural purposes;

(*b*) works for the drainage of land, or for the protection of land from floods, or from erosion or other damage by water;

Liability of farmer to have his lease cancelled for arrear adjudged due.

23. When an arrear of rent shall be adjudged to be due from any farmer or other leaseholder not having a permanent or transferable interest in the land, the lease of such leaseholder shall be liable to be cancelled, and the leaseholder to be ejected:

Proviso.

Provided that no such lease shall be cancelled nor the leaseholder ejected otherwise than in execution of a decree or order under the provisions of this Act.

Suits by or against surburakars or tehsildars of estates held khas.

24. All suits which under the provisions of this Act may be brought by or against zemindars or other persons in the receipt of rent of land, may be brought by or against surburakars or tehsildars of estates held under khas management, whether such estates are the property of Government or of individuals.

Proprietor's right to survey and measure his estate.

25. Every proprietor of an estate or tenure or other person in receipt of the rents of an estate or tenure has the right of making a general survey and measurement of the lands comprised in such estate or tenure, or any

(*c*) the reclaiming, clearing, or enclosing of lands for agricultural purposes;

(*d*) the renewal or alteration or re-construction of any of the foregoing works in addition thereto.

Section 22 (K)—

In case of difference as to amount or value of the compensation to be paid under the provisions of the foregoing section, either party may apply to the Court stating the matter in dispute, and requesting a determination thereof.

On receiving such application the Court shall—

(*a*) cause notice thereof to be served on the other party;

(*b*) take such evidence as the parties may adduce;

(*c*) make such further enquiry as it may deem necessary;

(*d*) determine the amount of the compensation to be paid.

Section 22 (L)—

Such amount shall, as nearly as may be, represent the capitalized unexhausted value of the improvement.

Section 22 (M)—

In determining the amount of compensation to be paid under this section the Court shall take into account any assistance given to the tenant by the person in receipt of rent, either in money or otherwise, for the purpose of making such improvements.

Section 22 (N)—

Every tenant (unless expressly restrained therefrom by written agreement) may make during his occupation of any land such improvements as come within the provision of the last preceding section, and may, on ejectment, claim compensation for the unexhausted value of such improvement: Provided that if any tenant under colour of this section execute any work by which the literal annual value of the land is diminished, he shall be liable to pay damages therefor.

[*N.-W. P. and Oudh Acts.*]

Section 25 (amended)—

Proprietor's right to survey and measure his estate.

Every proprietor of an estate or tenure, or other person in receipt of the rents of an estate or tenure, and representing the entire proprietary interest thereof, has the right of part thereof, unless restrained from doing so by express engagement with the occupants of the lands.

Registry of transfers of talookdars, &c.

26. All dependant talookdars and other persons possessing a permanent transferable interest in land *intermediate between the zemindar and the cultivator*, are required to register, in the serishtah of the zemindar or superior tenant to whom the rents of their talooks or tenures are payable, all transfers of such talooks or tenures, or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every zemindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers when made in good faith, and all such successions and divisions: provided that no zemindar or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent, in writing, of the zemindar or superior tenant.

Limitation of certain suits.

27. All suits instituted for the recovery of damages on account of the illegal exaction of rent, or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress, or on account of the excessive demand of rent, and all suits for abatement of rent and all suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or the breach of the conditions of any contract by which a ryot may be liable to be ejected, or a lease may be liable to be cancelled, and all suits to recover the occupancy of any land, farm or tenure from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same, and all suits arising out of the exercise of the power of distraint for arrears of rent conferred on zemindars and others by this or any other act or out of any acts done under colour of the exercise of the said power, shall be commenced within the period of one year from the date of the acquiring of the cause of action, and not afterwards.

Limitation of suits for grant of pottahs, &c.

28. Suits for the delivery of pottahs or kabuliyats and for the determination of the rates of rent at which such pottahs or kabuliyats are to be delivered, may be instituted at any time during the tenancy.

Limitation of suits for arrears of rent.

29. Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengali year, or from the last day of the month of Jeyt of the Fusli or Willayuttee year in which the arrear claimed shall have become due: provided that if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under section 13 of Act X of 1859, or under section 14 of this Act; and the

making a general survey and measurement of the lands comprised in such estate or tenure, or any part thereof, unless restrained from doing so by express engagement with the occupants of the lands, *or by the provisions of this Act.*

Section 26 (amended)—

Registry of transfers of talookdars, &c.

All persons possessing a permanent transferable interest in land are required to register, in the serishtah of the zemindar or superior tenant to whom the rents of their tenures are payable, all transfers of tenures, or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every zemindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers when made in good faith, and all such successions and divisions: provided that no zemindar or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent, in writing, of the zemindar or superior tenant.

Section 28 (amended)—

Limitation of suits for grant of pottahs, &c.

Suits for the delivery of pottahs or kabuliyats and for the determination of the rates of rent at which such pottahs or kabuliyats are to be delivered, may be instituted at any time during the tenancy, *except as otherwise specially provided in this Act.*

enhancement not having been confirmed by any competent court, the suit shall be instituted within three months from the end of the Bengali year, or of the month of Jeyt of the Fusli or Willayuttee year, on account of which such enhanced rent is claimed.

Limitation of suit against agents for money, papers, or accounts.

30. Suits for the recovery of money in the hands of an agent or for the delivery of accounts for papers by an agent, may be brought at any time during the agency or within one year after the determination of the agency of such agent: provided that if the person having the right to sue shall, by means of fraud, have been kept from the knowledge of the receipt of any such money by the agent, or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year, from the time when the fraud shall have been first known to such person; but no such suit shall in any case be brought at any time exceeding three years from the termination of the agency.

Suit for further balance to be instituted within six months of service of notice of deposit.

31. Whenever a deposit on account of rent shall have been made under the provisions of this Act or of Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, no suit shall be brought against the person making the deposit, or his representatives, on account of any rent which accrued due prior to the date of the deposit, unless such suit be instituted within six months from the date of the service of the notice in section 5 of the said Act VI of 1862, or in section 47 of this Act mentioned.

Naibs or gomashtahs to be deemed in certain cases authorized agents under Act VIII of 1859.

32. Every naib or gomashtah thereto specially authorized by any writing under the hand of his employer shall for the purposes of all suits for any of the causes of action mentioned in section 27, 28, 29, or 30 of this Act, be deemed to be the recognized agent of such employer within the meaning of section 17 of the said Act VIII of 1859, though such employer may be within the jurisdiction of the Court in which such naib or gomashtah may appear or make any application.

Cognizance of suits under this Act.

33. From and after the time when this Act shall commence and take effect in any place, the jurisdiction, save as regards any suits or proceedings then pending, of the Collectorate Courts in such place, under Act X of 1859 of the Governor General in Council, and Act VI of 1862 of the Council of the Lieutenant-Governor of Bengal, to entertain suits, shall cease; and all suits brought for any cause of action arising under either of those Acts or this Act shall, from such time and in such place, be cognizable by the civil Courts according to their several jurisdictions.

Proceedings to be regulated under Code of Civil Procedure.

34. Save as in this Act is otherwise provided, suits of every description brought for any cause of action arising under this Act and all proceedings therein shall be regulated by the Code of Civil Procedure passed by Governor Gen-

Section 33.

Recognizance of suits under this Act.

From and after the time when this Act shall commence and take effect in any place, jurisdiction, save as regards any suits or proceediags then pending, of the Collectorate Courts in such place under Act X of 1859 of the Governor General in Council, and Act VI of 1862 of the Council of the Lieutenant-Governor of Bengal, to entertain suits, shall cease; and all suits brought for any cause of action arising under either of those Acts or this Act shall, from such time and in such place, be cognizable by the civil Courts according to their several jurisdictions, *save as in this Act may be otherwise provided.*

eral in Council being Act No. VIII of 1859, and by such further and other enactments of the Governor General in Council in relation to Civil Procedure as now are, or from time to time may be, in force; and all the provisions of the said Act and of such other enactments shall apply to such suit.

Jurisdiction in certain suits.

35. The cause of action in suits brought for the delivery of any pottah or kabuliyat, or for the cancelment of any lease, for the determination of rates of rent, for illegal exactions of rent, cess, or impost, for refusal of receipts for rent paid, for extortion of rent, for excessive demand of rent, for abatement of rent, for arrears of rent, and for refusing to register tranfers, successions, or divisions under section 26 shall be deemed to have arisen within the jurisdiction of the Court which would have had jurisdiction to entertain a suit for the recovery of the land or other immoveable property in relation to which the cause of action arose, and shall be brought in such Court and in no other Court.

Provision when cause of action arises in different jurisdictions.

36. If the land which by the provisions of the next preceding section determines the place in which the cause of action in the suits in the said section mentioned shall be deemed to have arisen, be situate within the jurisdiction of different Courts, the provisions of sections 11 and 12 of the said Act VIII of 1859 shall apply to such suits as if the same had been suits for the recovery of such land.

Proceedings in case of opposition made to the measurement of land.

37. If any person intending to measure any land which he has a right to measure, is opposed in making such measurement by the occupant of the land; or if any under-tenant or ryot, having received notice of the intended measurement of land held or cultivated by him, which is liable to such measurement refuses to attend and point out such land, the person claiming the right to measure such land may apply to establish his right to measure such land in the Court which would have jursidiction in case such suit had been brought for the recovery of such land, and such Court shall hear and determine the right to make such measurement, and, if the case shall so require, shall make an order enjoining or excusing the attendance of any such under-tenant or ryot. If any under-tenant or ryot, after the issue of an order enjoining his attendance, neglects to attend and to point out the land, it shall not be competent to him to contest the correctness of the measurement made or any of the proceedings held, in his absence.

Section 37 (amended).

When any person or persons *representing the entire proprietary interest in an estate* which such person or partnership has a right to measure, intends to measure such estate, he or they shall give notice of such intention at least 15 days before the commencement of such measurement. Such notice may be served on the individual ryots or under-tenants whose land it is intended to measure, or it may be published by a general notice in writing at the mâl cutcherry of the village, together with proclamation by beat of drum in the village in which the land is situated. If after issue of such notice any such person or persons aforesaid is opposed in making such measurement, or if any under-tenant or ryot refuses to attend and point out his land, the person claiming the right to measure such land may apply to establish his right to measure to the Court which would have jurisdiction in case a suit had been brought for recovery of the rent of such land, and such Court shall forthwith hear and determine the right to make such measurement, and if the case shall so require, shall make an order enjoining or excusing the attendance of any such ryot or under-tenant. Such order may be served on each individual ryot or under-tenant, or it may be addressed to the villagers generally. In the latter case a copy of the order shall be stuck up in the village cutcherry and in the Moonsif's cutcherry, and in the nearest thana or police office, and shall be also proclaimed by beat of drum in the village in which the land is situated.

When a ryot or under-tenant attends the measurement, whether of his own accord or in pursuance of an order of the Court enjoining his attendance he shall be bound to sign the measurement papers in acknowledgment of his having witnessed the proceedings, or, if he have any objection as to the correctness of the measurement or otherwise, he shall be bound to state his objection in writing. Such objection in writing may be filed in the Court within three months of the completion of the measurement, and shall also be filed in the office or cutcherry of the person who made the measurement or his local agent.

If any under-tenant or ryot refuse or neglect to attend and point out his land after issue of an order from the Court enjoining his attendance, it shall not be competent to him to contest the correctness of the measurement made or of any proceedings held in his absence.

Measurement of land when it cannot be ascertained who are the persons liable to pay rent.

38. If the proprietor of an estate or tenure or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure, or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands or any part of the lands comprised therein, such proprietor or other person may apply to the Court which would have had jurisdiction in case a suit had been brought for the recovery of such lands, and such Court thereupon, and on the necessary costs being deposited therein by the applicant, shall order such lands to be measured, and shall cause a copy of such order to be transmitted to the Collector in whose jurisdiction the lands are situate, together with the sum so deposited for costs, and the Collector shall thereupon proceed to measure such lands, and shall ascertain and record the names of the persons in occupation of the same, or, on the special application of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine, and record the tenures and under-tenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable. If after due inquiry the Collector shall be unable to cause such lands to be measured, or to ascertain or record the names of the persons in occupation of the same, or if he shall (in any case in which such special application shall have been made as aforesaid) be unable to ascertain who are the persons having tenures or under-tenures in such lands, or any part thereof, then and in any such case such Collector may declare the same to have lapsed to the party on whose application such enquiry may have been made. If any person, within fifteen days after such Collector shall have recorded the name of such person as being in occupation of such land, or any part thereof, or shall have declared a tenure to have lapsed, shall appear and show good and sufficient cause for his previous non-appearence, and satisfy such Collector that there has been a failure of justice, such Collector may, upon such terms or conditions as may seem fit, alter or rescind such order according to the justice of the case.

Proceedings on completion of such measurement.

39. The Collector shall, as soon as conveniently may be, after he shall have finally completed any such measurement and record, return a copy

thereof to the Court by which such measurement had been ordered, and such Court shall receive and record the same; and every decision of the Collector made in pursuance of the provisions of section 38 shall be appealable as if the same had been an order of the Court into which such copy had been returned, made upon the day on which such copy was so returned but save as aforesaid, every decision of such Collector made in pursuance of the provisions of section 38 shall be final.

Collector's powers.

40. The provisions of the said Act VIII of 1859 and the Acts amending the same, or of any other Act or Acts for the time being in force in Civil Courts in Bengal, relating to the evidence of witnesses, to procuring the attendance of witnesses and the production of documents, and to the examination, remuneration, and punishment of witnesses, shall apply to all proceedings before any Collector under section 38, and for the purposes aforesaid, the Collector shall have all the powers and authorities in and by such Acts or any of them conferred upon the Court.

Measurement to be made by pergunnah pole.

41. All measurements made under this Act shall be made according to the standard pole of measurement of the pergunnah in which the land is situated.

Register of suits.

42. All suits brought under any of the provisions of this Act shall be entered in a special register of the Court kept for that purpose.

Form of plaint in suits for arrears of rent.

43. In any suit hereafter to be brought for the recovery of an arrear of rent, the plaint shall specify the name of the village and estate, and of the pergunnah or other local division in which the land is situate, the yearly rent of the land, the amount (if any) received on account of the year for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due. If the arrear is alleged to be due from any ryot, the plaint shall further specify the quantity of land; and where fields have been numbered in a Government survey, the number (if it be possible to give it) of each field.

Section 43 (amended)—

Form of plaint in suits for arrears of rent.

In any suit hereafter to be brought for the recovery of an arrear of rent, the plaint shall specify the name of the village and estate, and of the pergunnah or other local division in which the land is situate, the yearly rent of the land, the amount (if any) received on account of the year for which the claim is made, the amount in arrear and the time in respect of which it is alleged to be due. If the arrear is alleged to be due from any ryot or under-tenant, the plaint shall further specify the total area of the land and the area and boundaries of each field therein, together with the rates paid for each field, and where fields have been numbered in a Government or other survey, the number (if it be possible to give it) of each field.

Section 43 (A)—

Any person suing for an aliquot part in any instalment or arrear of rent, shall be bound to set forth in the plaint to the best of his belief the names of all persons interested in the remainder of such instalment or arrear of rent. He shall also give intimation through the Court of all such persons of the claim preferred by him. It shall be the duty of the Court to give the ryot or under-tenant an opportunity of paying into Court the whole of the instalment or arrear due, leaving the distribution of the same among the proprietary co-sharers to the Court bringing the suit.

Section 43 (B)—

In every suit under this Act of the following nature, that is to say [

]

(*a*) suits for delivery of kabuliyats or for determination of rates at which such kabuliyats are to be delivered;

(*b*) suits for arrears of rent;

any number of ryots may be sued collectively. It shall be no ground for the dismissal or refusal to hear the application that such ryots or other tenants are wrongly joined as defendants: provided that the suit against all the tenants be of the same nature and be on account of lands situated in the same estate, or where an estate consists of more than one village situated in the same village having one registered putwari, and that no question of right or title is involved: provided also that if it shall appear at any time during the trial that the question between any two of the parties so joined cannot be conveniently tried jointly with the others, the Court may order such question to be tried separately.

Section 43 (C)—

In every suit brought under this Act of the following nature, that is to say—

(*a*) suits for delivery of pottahs or for determination of rates of rent at which such pottahs are to be delivered;

(*b*) suits for damages on account of illegal exaction of rent, or of any unauthorised cess or impost, or on account of refusal of receipts for rent paid, or on account of extortion of rent by confinement or other duress;

(*c*) complaints of excessive demand of rent and all claims to abatement of rent;

(*d*) suits arising out of the exercise of the power of distraint conferred by this Act or out of any acts done under colour of the said powers;

Any number of ryots may sue collectively, and it shall be no ground for dismissing or refusing to hear the application or plaint that such ryots or under-tenants are wrongly joined as plaintiffs: provided that the suit of all such ryots are of the same kind, and are, on account of, or with reference to, land situated in the same estate, or where an estate consists of more than one village, in the same village having one registered putwari: provided also that if it shall appear at any time during the hearing of the suit that the question between any two of the parties so joined cannot be conveniently tried jointly with the others, the Court may order that such question be tried separately.

Section 43 (D)—

No ryot or ryots shall be liable to be sued for rent by a thikadar or middleman, or other person having a limited terminable interest in the land, unless the lessor through whom such thikadar, middleman, or other person as aforesaid derives his title shall have notified to such ryot or ryots the condition and terms of the lease under which such thikadar or middleman or other person aforesaid is entitled to collect rents. Such notification shall be made by affixing a copy of the lease in the mâl cutcherry of the village in which the land is situated, and shall be also proclaimed by beat of drum in the village in which the land is situated.

Section 43 (E)—

Any ryot or ryots suing a thikadar or middleman, or other person in receipt of rent not having a permanent transferable interest in the land, or any matter affecting the permanent status of such ryot or ryots, may join as defendant in such suit the lessor through whom such thikadar or other person aforesaid derives his title.

Section 43 (F)—

Every order passed under the provisions of the last four preceding sections shall specify, as far as possible, the extent to which each and every one of the parties joined in the plaint or joined as defendants shall be affected by such order.

Section 43 (G)—

No suit for rent shall be entered or decreed under this Act against any tenant unless the plaintiff file with the plaint a complete or incomplete kabuliyat as defined in sections 2 and 2(A).

Section 43 (H)—

No suit for abatement of rent shall be entertained or decreed against any person in receipt of rent unless the ryot claiming such abatement file with the plaint a complete or incomplete pottah as defined in sections 2 and 2(A), respectively, of this Act.

The Court may in certain cases award to the plaintiff additional damages not exceeding 25 per cent.

44. In any suit hereafter to be brought for rent under the provisions of this Act, if it shall appear to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount due by him, and that he has not, before the institution of the suit, tendered such amount to the plaintiff or his duly authorized agent, or in case of the refusal of the plaintiff or such agent to receive the amount tendered, has not deposited such amount in the Court before the institution of the suit in manner hereinafter mentioned, it shall be lawful for the Court to award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as the Court may think fit. These damages, if awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of twelve per centum per annum from the date of decree until payment thereof.

The Court may award compensation not exceeding 25 per cent. on the amount sued for, to a defendant improperly sued.

45. In any suit hereafter to be brought for rent under the provisions of this Act, if it shall appear to the Court that the plaintiff has instituted the suit against the defendant without resonable or probable cause, or that the defendant had before the institution of the suit duly deposited in the Court, in the manner hereinafter mentioned, the full amount which the Court shall find to have been due to the plaintiff at the date of such deposit, it shall be lawful for the Court to award to the defendant, by way of compensation, such sum, not exceeding twenty-five per centum, on the whole amount claimed by the plaintiff as the Court may think fit; and such sum, with interest at the rate of twelve per centum per annum until payment thereof, shall be recoverable from the plaintiff in like manner as sums ordered to be paid by decrees of such Court.

Under-tenant or ryot may, after tender, &c., pay into Court, without any action being brought against him, what he admits to be due to his zemindar, &c.

46. If any under-tenant or ryot shall, at the mâl cutcherry for the receipt of rents or other place where the rents of the land or other immovable property held or cultivated by him are usually payable, tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender to the zemindar or other person in receipt of the rent of such land; and if the amount so tendered shall not be accepted, and a receipt in full shall not be forthwith granted, it shall be lawful for the under-tenant or ryot without any suit having been instituted against him, to deposit such amount in the Court having jurisdiction to entertain a suit for such rent, to the credit of the zemindar or other person aforesaid; and such deposit shall, so far as the under-tenant or ryot, and all persons claiming through or under him, are concerned, in all respects operate as, and have the full effect of, a payment then made by the under-tenant or ryot of the amount deposited to such zemindar or other person.

Payment into Court to have effect of payment to zemindar or other person entitled.

Proceedings on making a payment into Court and drawing out the money.

47. Such deposit shall be received in such Court on the application of the under-tenant or ryot, or his agent, made in writing, and on the under-tenant or ryot, or his agent, making a declaration in the form, or as nearly as circumstances will admit, in the form set forth in the Schedule (A) hereto annexed, and the Court shall give a receipt for the same under its seal. If the declaration shall contain any averment which the person making the declaration shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence. Upon receiving the money so deposited, the Court shall issue a notice to the person to whose credit it has been deposited in the form set forth in the Schedule (B) hereto annexed; and such notice shall be served by the Court, without the payment of any fee, either upon the person to whom it is addressed, or upon his naib, gomashtah, or other agent; and in the absence of any

Section 46*a*—

If there should be a dispute between rival rent claimants as to which of them is entitled to the whole or any part of the rent of a ryot's holding, and such ryot, after claim made upon him by the rival rent claimants aforesaid is doubtful as to which of them is entitled to the rent or any quota thereof, such ryot may deposit the whole or any part of his rent in the Court having jurisdiction to entertain a suit for such rent to the credit of the rival rent claimants. Such deposit shall have, as far as the ryot or under-tenant and all persons claiming through him are concerned, the same force and effect as if the ryot had paid the amount of the deposit to the person or persons legally entitled thereto. The Court shall give a receipt in full for the amount of the deposit, and the rival claimants shall be bound to settle among themselves by civil suit, or otherwise according to law, which of them is entitled to the whole or any part of the deposited amount.

Section 47 (amended)—

Proceedings on making a payment into Court and drawing out the money.

A deposit made under the provisions of section 46 shall be received in such Court on the application of the under-tenant or ryot, or his agent, made in writing, and on the under-tenant or ryot, or his agent, making a declaration in the form, or as nearly as circumstances will admit, in the form set forth in the Apppndix (D) hereto annexed, and the Court shall give a receipt for the same under its seal. If the declaration shall contain any averment which the person making the declaration shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence. Upon receiving the money so deposited, the Court shall issue a notice to the person to whose credit it has been deposited, in the form set forth in Appendix (E) hereto an-such agent, it shall be served by sticking up a copy of the same in the said Court, and another copy upon mâl cutcherry for the receipt of rents, or other place where the rents are usually paid for the land in respect of which the money has been deposited. If the person to whom such notice is issued, or his duly authorized agent, shall appear, and apply that the money in deposit be paid to him, it shall be immediately made over to him.

After action brought defendant may pay into Court, without costs, money tendered before action brought.

48. The defendant in any suit instituted under any of the provisions of this Act may, if he have duly tendered the same to the plaintiff before the institution of the suit,

nexed; and such notice shall be served by the Court, without the payment of any fee, either upon the person to whom it is addressed, or upon his naib, gomashtah, or other agent; and in the absence of any such agent, it shall be served by sticking up a copy of the same in the said Court, and another copy upon mâl cutcherry for the receipt of rents, or other place where the rents are usually paid for the land in respect of which the money has been deposited. If the person to whom such notice is issued, or his duly authorized agent, shall appear, and apply that the money in deposit be paid to him, it shall be immediately made over to him.

Section 47*a*—

Proceedings on making a payment into Court and drawing out the money.

A deposit made under the provisions of section 46*a* shall be received in such Court on the application of the under-tenant or ryot, or his agent, made in writing, and on the under-tenant or ryot, or his agent, making a declaration in the form or as nearly as circumstances will admit in the form set forth in the Appendix (F) hereto annexed, and the Court shall give a receipt for the same under its seal. If the declaration shall contain any averment which the person making the declaration shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence. Upon receiving the money so deposited, the Court shall issue a notice to the person to whose credit it has been deposited in the form set forth in the Appendix (G) hereto annexed; and such notice shall be served by the Court, without the payment of any fee, either upon the person to whom it is addressed, or upon his naib, gomashtah, or other agent; and in the absence of any such agent, it shall be served by sticking up a copy of the same in the said Court, and another copy upon mâl cutcherry for the receipt of rents, or other place where the rents are usually paid for the land in respect of which the money has been deposited. If the persons to whom such notice is issued shall appear personally, or by agent, and file an application in such Court, to the effect that they have settled among themselves the amount of the deposit to which they are severally entitled, the amount deposited shall be made over to them, or either of them, in accordance with the terms of their joint application. In the absence of such joint application aforesaid, the Court shall retain the deposit, unless and until it shall have received an order from a competent Civil Court directing payment of the amount deposited to the person or persons legally entitled thereto.

Section 47*b*—

If no such application as is described in section 47, or no such application or order of a competent Civil Court as is described in section 47*a*, be received by the Court within three years from the date of the deposit, the sum shall be repaid to the depositor on the expiration of the three years aforesaid.

pay into Court such sum of money as such defendant may consider to be due to the plaintiff, without paying in any costs incurred by the plaintiff up to the time of such payment, and such sum shall be immediately paid out of Court to the plaintiff.

Costs if plaintiff goes on and recovers no more.

If after such payment the plaintiff elects to proceed in the suit and ultimately recovers no further sum than shall have been paid into Court, the plaintiff shall be charged with the whole costs of the suit incurred by the defendant; but if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall be charged with the whole costs of the suit.

If no previous tender has been made, defendant may pay into Court what he admits to be due, with costs on that sum.

49. The defendant in any suit instituted under any of the provisions of this Act may without having made any tender before action brought pay into Court such sum of money as he shall consider to be due to the plaintiff, together with the costs (to be fixed by the Court, if necessary, as of a suit originally instituted for the amount so paid into Court) incurred by the plaintiff up to the time of such payment, and such sum shall immediately be paid out of Court to the plaintiff. If after such payment the plaintiff elects to proceed in the suit, and ultimately recovers no further sum than shall have been paid into Court, he shall be charged with all costs incurred by the defendant subsequently to such payment; but if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall be charged with costs as upon a suit originally instituted, for the whole amount, for which the plaintiff ultimately obtains a decree, but shall have credit thereout for the amount of costs paid into Court by him in the first instance.

Costs, if plaintiff goes on with the suit.

No warrant of arrest before judgment.

50. No warrant of arrest before judgment shall be issued in a suit for arrears of rent due in respect of a defendant talook or other transferable tenure which may be liable to sale in execution of any decree which may be passed in the case.

Mesne profits may be claimed in suits for recovery of land.

51. It shall be lawful for any person entitled to recover the possession of land under any of the provisions of this Act to include in his plaint a claim for the mesne profits of the land.

Suits for ejectment, or cancelment of lease.

52. Any person desiring to eject a ryot or to cancel a lease on account of non-payment of arrears of rent may sue for such ejectment or cancelment, and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of such suits for the ejectment of a ryot or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed.

Court to issue immediate execution in certain cases.

53. Whenever in any suit brought by any zemindar or other person in receipt of the rent of land to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorised by any Regulation or Act, the Crurt shall pass a decree in favour of the plaintiff; no application in the form provided in section 212 of the said Act VIII of 1859 shall be necessary, but the Court shall forthwith, upon the plaintiff depositing in Court the necessary expenses, make an order for delivery of possession in execution of the decree; provided, however, that in cases to which section 52 of this Act is applicable no such order shall be made until after the expiration of fifteen days from the date of the decree.

In such cases execution not to be stayed pending appeal.

54. It shall not be lawful for the Court to entertain any application for stay of execution of any such order pending any appeal, and no person who shall have been evicted under any such order shall be restored to possession so long as the decree under which such order was issued shall remain unreversed.

If person required by the decree refuse to grant pottah, Court may do so.

55. When a decree is given for the delivery of a pottah, if the person required by the decree to grant such pottah refuse or delay to grant the same, the Court may grant a pottah in coformity with the terms of the decree under the signature and seal of such Court, and such pottah shall be of the same force and effect as if granted by the person aforesaid.

Refusal to execute kabuliyat as required by the decree.

56. When a decree is given for the delivery of a kabuliyat, if the person required by the decree to execute such kabuliyat shall refuse to execute the same, the decree shall be evidence of the amount of rent claimable from such person, and a copy of the decree under the signature and seal of the Court shall be of the same force and effect as a kabuliyat executed by the said person.

Process not to issue simultaneously against both person and property.

57. Process of execution in any suit instituted under this Act may be issued against either the person or the property of a judgment-debtor, but process shall not be issued simultaneously against both the person and property.

No execution to be issued after three years from the date of judgment.

58. No process of execution of any description whatsoever shall be issued on a judgment in any suit for any of the causes of action mentioned in section 27, 28, 29 or 30 of this Act *after the lapse of three years from the date of such judgment* unless the judgment be for a sum exceeding five hundred rupees, in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the Court.

Section 58 (amended)—

No process of execution of any description whatever shall be issued on a judgment on any suit for any cause of action mentioned in section 27, 28, 29 or 30 of this Act, *unless an application for such process shall have been made and granted* within three years of the date of such judgment: provided that if the judgment be for a sum exceeding five hundred rupees, the period in which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the Court.

Explanation.—Date of judgment in this section means (or does not mean?) the date of final judgment.

Procedure on sale of under-tenure.

59. Whenever a decree may be passed for an arrear of rent due in respect of an under-tenure which by the title deeds or the custom of the country is transferable by sale, and the judgment-creditor shall make application for the attachment and sale of such under-tenure, the Court, so soon as such under-tenure shall have been ordered to be sold, cause to be hung up in some conspicuous part of the building in which such Court sits, and of the buildings in which the Collector and Judge of the District within which the land comprised in such under-tenure is situate, and to be affixed on some conspicuous place on such land and on some conspicuous place in the town or village in or nearest to which such land is situate, a notice for the sale of such under-tenure on some fixed date not less than twenty days from the hanging up of such notice in such Court.

Contents of notice of sale of under-tenure.

60. Every such notice shall specify in the words used in the plaint in the suit in which the decree was made, the name of the village, estate, and pergunnah, or other local division in which the land comprised in the said under-tenure is situated, the yearly rent payable under the said under-tenure, and the gross amount recoverable under the said decree.

Under-tenure not to be sold while other execution in force.

61. No order for the sale of any such under-tenure shall be made in execution of a decree for recovery of arrears of rent payable in respect thereof, when a warrant of execution has been previously issued against the person or movable property of the judgment-debtor, so long as such warrant remains in force. If after sale of any such under-tenure in execution of such decree any portion of the amount decreed remains due, process may be applied for and issued against any other property, movable or immovable, belonging to the debtor.

How the sale may be stayed by person interested in under-tenure.

62. If the sum due under the decree, together with interest to date of payment, and all costs of process be paid into Court at any time before the sale commences, whether by the defaulting holder of the under-tenure or any one on his behalf, or any one interested in the protection of the under-tenure, such sale shall not take place; and the provisions of section 13 of Regulation VIII of 1819, for the recovery of sums paid by persons other than the defaulting holder of the under-tenure to stay the sale of the under-tenure, shall be applicable to all similar payments made under this section.

If third party claim to be the lawful possessor of such under-tenure, Court to stay the sale and to inquire into and adjudicate upon the claim, upon decree being paid or secured.

63. If after attachment and before sale of any such under-tenure as aforesaid, in execution of a decree for arrears of rent due in respect of such under-tenure, any third party may prefer a claim alleging that such third party and not the person against whom the decree has been obtained is the proprietor of such under-tenure, and was in lawful possession of the same at the time when such decree was obtained, the Court shall not postpone such

sale, unless and until such third party shall have deposited in Court the amount of the decree, or given sufficient security for the same: provided always that no transfer of an under-tenure which, by the provisions of this Act or any other law for the time being in force, is required to be registered in the sherishtah of the zemindar or superior tenant, shall be recognized unless it has been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Court.

Non-registered transfers not to be recognised.

Execution of decrees given in favour of shares in undivided estates or tenures.

64. If a decree is given in favour of a sharer in a joint undivided estate, dependent talook, or other similar tenure, or money due to him on account of his share of the rent of an under-tenure situate in such undivided estate, talook, or tenure, no order for the sale of such under-tenure in execution of such decree shall be made unless and until all movable property (if any) which such judgment-debtor may possess within the jurisdiction of the Court in which the suit was instituted shall have been seized and sold in execution of such decree, and the sale of such property (if any) shall have proved insufficient to satisfy the judgment. In such case such under-tenure, if of the nature described in section 59, may be seized and sold in execution of such decree, according to the ordinary procedure of the Court and not in the manner provided in the said section, and every such sale shall have such and the same effect as the sale of any immovable property sold in execution of a decree not being for arrears of rent payable in respect thereof.

Execution of judgment.

65. In the execution of any decree for the payment of any money under this Act, not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or movable property of the debtor within the district in which the suit was instituted, the judgment-creditor may apply for execution against any immovable property belonging to such debtor.

Purchaser to acquire the under-tenure, with certain exceptions, free of incumbrances.

66. The purchaser of an under-tenure under the provisions of sections 59 and 60 of this Act shall acquire it free of all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created, or by the subsequent written authority of the person who created it, his representatives or assignees; provided that nothing herein contained shall be held to entitle the purchaser to eject khoodhast ryots or resident and hereditary cultivators, nor to cancel *bonâ fide* engagements made with ryots or cultivators of the classes aforesaid by any holder of the under-tenu[illegible]r his representatives except it be proved in a regular suit to be brought by such purchaser for the adjustment of his rent that a higher rent would have been demandable at the time such engagements were contracted by his

predecessor, nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof through whose default the tenure was brought to sale.

69. The purchaser of an under-tenure sold under this Act shall apply to the zemindar or other landholder within fifteen days from the day of sale to have his name registered in the zemindar or other landholder's books as the purchaser, and shall execute a kabuliyat on the same terms and conditions on which the under-tenure was held by the defaulter; and if such application be not made within fifteen days, it shall be lawful for the zemindar or other landholder to sue the said purchaser for the delivery of a kabuliyat.

Zemindar how to proceed if purchaser do not register.

68. The produce of the land is held to be hypothecated for the rent payable in respect thereof; and when an arrear of rent, as defined in section 21 of this Act, is due from any cultivator of land, the zemindar, lakhirajdar, farmer, dependent talookdar, under-farmer, or other person entitled to receive the rent of such land immediately from the actual cultivator thereof, instead of bringing suit for the arrear as hereinbefore provided, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due under the following rules: provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given, shall not be liable to distraint: provided also that no sharer in a joint estate, dependent talook, or other tenure in which a division of land has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorized to collect the rents of the whole estate, talook, or tenure on behalf of all the sharers in the same.

Produce of the land to be held hypothecated for the rent.

Arrears of rent may be recovered by distraint under the following rules.

Cultivators who have given security to be exempt from distraint.

Proviso.

69. Distraint shall not be made for any arrear which has been due for a longer period than six months; nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator.

No distraint in certain cases.

70. The power of distraint vested by section 61 in zemindars and other persons entitled to receive rent form cultivators of land may be exercised by

Power of distraint to be exercised by managers under the Court of Wards, &c.

Section 68*a*—

When rent is payable in kind the person in receipt of rent, except as is otherwise provided in section 22*h*, shall have the same powers and no more of interfering with the crop and of realizing his rent by suit, distraint or otherwise, as he would have if rent were payable in money.

Section 68*b*—

Where rent is payable in kind and there is a dispute between the parties as to the apportionment, appraisement, or estimating of the crop, the provisions of section 68*a* shall be applicable.

managers under the Court of Wards, surburakars, and tehsildars of estates held under khas management, and other persons lawfully entrusted with the charge of landed property; and also by naibs, gomastahs, and other agents employed by any such persons as aforesaid in the collection of rent, if expressly authorised by power-of-attorney in that behalf: Provided that if any illegal act is committed by any such naib, gomastah, or other agent under colour of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

Proviso.

Standing crops and crops gathered but not stored, liable to distraint.

71. Standing crops, and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act. But no such crops or products other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act.

Defaulter to be served with a written demand, &c., before or at the time of distraint.

72. Before or at the time when distraint is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served personally on the defaulter, or if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

Distress to be proportionate to the arrear if not paid or tendered.

73. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid of the value proportionate to the amount of the arrear with costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

Section 72 (amended)—

Before or at the time the distraint is made under this Act, the distrainer shall cause each individual defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made, the amount demanded for each instalment in arrear, the extent, description and estimated value of the crops which it is proposed to distrain, and the boundaries of the fields on which such crops are growing, or have been grown, as the case may be. The demand shall, if practicable, be served personally on the defaulter in presence of the putwari or of two members of the village punchayet. If the defaulter abscond or conceal himself so that the demand cannot be served, the demand and account shall be affixed to his usual place of residence. In the latter case the putwari or two members of the village punchayet shall certify that the defaulter has absconded or concealed himself, or that the demand and account cannot be served on him personally.

The distrainer shall at the same time furnish the Collector of the district, or the putwari, or village punchayet, or such person or persons as the Collector may from time to time direct, with a copy of this written demand and account.

Section 73—

Distress to be proportionate to the arrear if not paid or tendered.

Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid of value proportionate to the amount of the arrear with costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence, and also to the Collector or to such other person or persons as the Collector shall direct.

Standing crops, &c., when attached, to be reaped and stored by the cultivator, or, if he neglect to do so by the distrainer.

74. Standing crops and other ungathered products may, notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries or other places as are commonly used by him for the purpose. If the cultivator neglects to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood. In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose. Crops or products, which from their nature do not admit of being stored, may be sold, before they are cut or gathered, under the rules hereinafter provided; but in such case the distraint shall be made at least twenty days before the time when the crops or products, or any part of the same would be fit for cutting or gathering.

Distrainer may apply for aid to the Court upon occasion of resistance made or apprehended.

75. If a distrainer shall be opposed, or shall apprehend resistance, and shall desire to obtain the assistance of a public officer, he may apply to the Court which, under the provisions of this Act, would have jurisdiction to entertain a suit for the rent for which such distrainer is about to distrain, and the Court may, if it thinks necessary, depute an officer to support the distrainer in making the distraint.

Persons empowered to distrain may give written authority to their servants to do so.

76. When any person empowered to distrain property under section 68 or section 70 shall employ a servant or other person to make the distress, he shall give to such servant or person a written authority (which may be on plain paper) for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

Distress to be withdrawn if defaulter tender payment of arrear and expenses of attachment prior to the day of sale.

77. If at any time after property has been distrained and prior to the day fixed for its being put up to sale as hereinafter provided, the owner of the property shall tender payment of the arrear demanded of him and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

Application for sale.

78. Within five days from the time of the storing of any distrained crops or products, or if the crops or products do not from their nature admit of being stored, within five days from the time of making the distress, the distrainer shall apply for sale of the same to the Court which would

Section 75 (amended)—

If the distrainer shall be opposed, or shall apprehend resistance, and shall desire to obtain assistance of a public officer, he may apply to the Collector or sub-divisional officer for such assistance. The Collector or sub-divisional officer aforesaid may, if he thinks necessary, after satisfying himself that the application is in accordance with the provisions of this Act, give assistance to support the distrainer in making the distraint, as may be necessary.

Explanation.—The Collector or sub-divisional officer, before giving the distrainer assistance under this section, must be satisfied that the application does not come from a fractional shareholder; that it does not relate to an arrear of more than six months' standing; that it does not relate to an enhanced demand, unless such demand shall have been made after written agreement; and that it is otherwise in accordance with the provisions of this Act.

Section 78 (amended)—

If within ten days after service of notice of demand on the tenant and on the Collector, or such persons as the Collector may direct, the arrear is not made good, and if the demand be not contested by suit in the Civil Court when the ryot alleges no rent is due, have jurisdiction to entertain a suit for the rent for which the distress was made.

Form of application.

79. The application shall be in writing, and shall contain an inventory or description of the property distrained, the name of the defaulter and his place of residence, amount due, and the date of the distress, and the place in which the distrained property is deposited. Together with the application the distrainer shall lodge in Court the amount necessary for the service of a notice upon the defaulter as hereinafter provided.

Cost of notice upon defaulter to be deposited by distrainer.

Procedure by Civil Court on receipt of application.

80. Immediately on receipt of any application under the provisions of the next preceding section, the Court to which such application shall have been made shall appoint an officer to conduct the sale of such property, and shall cause to be served a notice [which shall be in the form contained in the Schedule (C) to this Act, or to the like affect] on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before such Court within the period of fifteen days from the receipt of the notice; and shall at the same time cause to be affixed upon some conspicuous place in the court-house a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited. The proclamation shall contain a description of the property, the demand for which it is to be sold, and the place where the sale is to be held.

Sale to be suspended when suit instituted.

81. If a suit shall be instituted in pursuance of the aforesaid notice, the Court shall suspend proceedings in regard to the sale of the distrained property, and shall certify to the officer appointed to conduct the sale of such suspension.

or by deposit of rent in the Civil Court when an arrear is admitted to be due, but the correctness of the amount demanded is disputed, the distrainer may apply to the Collector, or to such person or persons as the Collector shall from time to time direct, to sell the property distrained.

The Collector may, for the purposes of this section, direct that applications for sale of distrained property be made to the registered village putwari, or to the village punchayet, or to the sub-divisional officer, or to such other person or persons as he may, with reference to local circumstances, deem fit and proper: Provided that all such applications to whomsoever made shall bear stamp duty as prescribed in the next succeeding section.

Section 78*a*—

All applications under the last preceding section shall bear stamp duty calculated on double the amount of the arrear which it is sought to recover by distraint.

Section 80 (amended)—

Immediately on receipt of any application under the provisions of section 78 or 79, the Collector, or other person to whom such application shall have been made in accordance with the provisions of this Act, shall cause a written notice to be served on the person whose property has been distrained [which shall be in the form contained in the Appendix (H) to this Act, or to the like effect] requiring him either to pay the amount demanded or to institute a suit in the Civil Court to contest the demand within a period of fifteen days from the receipt of such notice.

Section 81 (amended)—

If a suit shall be instituted in pursuance of the aforesaid notice, the Court shall certify the fact to the Collector, or village putwari, or village punchayet, or to such other person or persons as the Collector shall from time to time direct, and the distraint shall then be withdrawn: Provided that the deposit in the Court of the amaunt claimed shall be a condition precedent to the withdrawal of distress under this section.

Suit to contest distrainer's demand before issue of notice of sale.

82. Any person whose property has been distrained in the manner in this Act provided may institute a suit to contest the demand of the distrainer immediately after the distraint of his property, and before the issue of notice of sale; when such suit is instituted, the Court shall suspend proceedings in respect of the sale of such property.

Distress to be withdrawn on receipt of Court's certificate that the owner has executed bond to pay amount of decree with interest and costs.

83. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with sufficient security, binding himself and his sureties to pay whatever sum may be adjudged to be due from him with interest and costs of suit; and when such bond is executed the Court shall give to the owner of the property a certificate to that effect, or, if so requested, shall serve the distrainer with notice of the same, and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Court, the property shall be released from distraint.

Value of claim in suits disputing distress.

84. The estimated value of the claim made in any suit filed under the provisions of sections 80, 82 and 96 or any of them, shall be deemed to be the amount of arrears of rent for which the distraint shall have been made.

On expiration of period fixed in the proclamation of sale, if institution of suit to contest distrainer's demand have not been certified, sale may be proceeded with.

85. On the expiration of the period fixed in the proclamation of sale, if a suit to contest the demand of the distrainer be not in the meantime instituted in the Court and certified to the officer appointed to conduct the sale, such officer shall, unless the said demand with such costs of the distress as shall be allowed by him, be discharged in full, proceed to sell the property, or such part of it as may be necessary, in the manner hereinafter prescribed.

Place and manner of sale of distrained property.

86. The sale shall be held at the place where the distrained property is deposited, or at the nearest gunge, bazar, haut, or other place of public resort, if the officer appointed to conduct the sale should be of opinion that it is likely to sell there to better advantage. The property shall be sold by public auction in one or more lots as such officer holding the sale may think advisable; and if the demand with the costs of distress and sale be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

If fair price be not offered, sale may be postponed to another day, and shall be then completed at whatever price may be offered.

87. If on the property being put for sale a fair price, in the estimation of the officer holding the sale, be not offered for it, and the owner of the property or some person authorized to act on his behalf apply to have the sale postponed un-

Section 83 (amended)—

Distress to be withdrawn on receipt of Court's certificate that the owner has executed bond to pay amount of decree with interest and costs.

The person whose property has been distrained may at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with sufficient security binding himself and his sureties to pay whatever sum may be adjudged to be due from him with interest and costs of suit: and when such bond is executed, the Court shall give to the owner of the property a certificate to that effect, or, if so requested, shall serve the Collector, or such other person aforesaid as the Collector may from time to time direct, with notice of the same, and on such notice being served the property shall be released from distraint.

Section 85 (amended)—

On expiration of fifteen days from receipt of an application under sections 78 and 79, if a suit to contest the demand of the distrainer be not in the meantime instituted in the Court and certified to the Collector or other person in the manner prescribed in section 81 or 83, the Collector or other person aforesaid shall, unless the said demand, with such costs of the distress as shall be allowed by the Collector, be discharged in full, proceed to sell, or cause to be sold, the property distrained or such part thereof as may be necessary in the manner hereinafter prescribed.

Explanation.—'Person' in the last two preceding sections means the person or persons to whom the Collector shall by general or special order direct that applications for sale of distrained property be made as provided in section 78.

til the next day or the next market day, if a market be held at the place of sale, the sale shall be postponed until such day, and shall be then completed, whatever price may be offered for the property.

Payment of purchase-money.

88. The price of every lot shall be paid for in ready money at the time of sale, or as soon after as the officer holding the sale shall think necessary; and in default of such payment, the property shall be put up again and sold. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale.

89. From the proceeds of the sale of distrained property, the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall transmit the amount to the Court, in order that it may be credited to Government. He shall then pay to the distrainer the expenses incurred by the distainer on account of the distress and of the issue of the notice and proclamation of sale prescribed in section 80, to such amount as, after examination of the statement of expenses furnished by the distrainer, he shall think proper to allow. The remainder shall be applied to the discharge of the arrear for which the distraint was made, with interest thereupon up to the day of sale; and if there be any overplus, it shall be delivered to the person whose property shall have been sold.

Officers holding sales prohibited from purchasing.

90. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, who are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

All irregularities to be reported to the Court.

91. Officers holding sales of distrained property are required to bring to the notice of the Court any material irregularities committed by distrainers under colour of this Act; and if in any case on proceeding to hold a sale of property such officer shall find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Court, *and the Court shall direct the issue of another notice and proclamation of sale under section 80, or pass such other order as may seem proper.*

Recovery of expenses if officer proceed to place of sale and no sale takes place.

92. When any such officer has proceeded to any place for the purpose of holding a sale, and no sale takes place either for the reason stated in the last preceding section, or because the demand of the distrainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained

Section 89 (amended)—

From the proceeds of the sale of distrained property, the person holding the sale shall make a deduction of not more than five per cent. on account of the costs of the sale, and shall transmit the amount to the Collector in order that it may be credited to Government. The remainder shall be applied to the discharge of the arrear for which distraint was made, together with such necessary expenses as the Collector shall by general or special order think proper to allow. If there be any overplus it shall be delivered to the person whose property shall have been sold. All persons conducting sales under the provisions of this Act shall be deemed to be public servants within the meaning of the Penal Code. They shall be also deemed to be officers of the Collector or Court ordering the sale.

Section 91 (amended)—

Officers holding sales of distrained property are required to bring to the notice of the Collector any material irregularities committed by distrainers under colour of this Act; and if in any case on proceeding to hold a sale of property, such officer shall find that the owner of the property has not received due notice of the distress, he shall postpone the sale and report the case to the Collector. The Collector on being satisfied that the distrainer has committed any material irregularities may order that the distraint be withdrawn, or that the distrainer be prosecuted under the provisions of section 99 of this Act, or that he be prosecuted under the provisions of the Penal Code, or he may pass such other lawful order as may to him seem fit and proper.

Section 92—

Recovery of expenses if officer proceed to place of sale and no sale takes place.

When any such officer has proceeded to any place for the purpose of holding a sale and no sale takes place either for the reason stated in the last preceding section, or because the demand of the distrainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to such officer, the charge of not more than 5 per cent. on account of expenses shall property. If the demand of the distrainer be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary. In all other cases the Court shall make an order that such expenses shall be paid by the distrainer, and shall in such order fix the amount to be paid by him; such amount not to exceed the sum of ten rupees; and the amount by such order directed to be paid may be recovered from such distrainer as if such order were a decree of such Court.

Proceedings of officers, &c., subject to revision and orders of Court.

93. All proceedings under this Act of the officers appointed to hold sales of distrained property shall be subject to the revision and orders of the Court to which they respectively are attached, and the Court may require the submission of such reports and statements of business performed by such officers as may be thought necessary.

Second proclamation of sale.

94. When a suit has been instituted to contest the demand of a distrainer and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Court shall issue an order to the officer appointed to conduct the sale of such property and furnish a copy of such order to the distrainer, authorizing the sale of the property; and on the application of the distrainer, which shall be made within five days from the receipt by him of such copy of such order, such officer shall publish a second proclamation in the manner prescribed in section 80, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation; and unless the amount adjudged to be due with the costs of distress, including any costs of suit which may be ordered to be paid by the person instituting such suit, be paid intermediately, shall proceed to sell the property in the manner hereinfore provided.

Procedure after institution of suit to contest distrainer's demand.

95. In all suits instituted to contest the demand of a distrainer, the distrainer shall be required to prove the arrear in the same manner as if he had himself instituted a suit for the amount. If the demand or any part thereof is found to be due, the Court shall make a decree for the amount in favour of the distrainer, together with such costs of suit as to such Court may seem proper, and the amount may be recovered by sale of the property as provided in the last preceding section if the distress had not been withdrawn, and if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter, or if the property has been released on security, by execution of the decree against the person and property of the defaulter and of his surety. If, on the other hand, the distraint is adjudged to be vexatious or groundless, the Court, besides directing the release of the distrained property, may award such

be leviable, and shall be calculated on the estimated value of the distrained property. If the demand of the distrainer be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary. In all other cases the Collector shall make an order that such expenses shall be paid by the distrainer, and shall in such order fix the amount to be paid by him; such amount not to exceed the sum of ten rupees; and the amount by such order directed to be paid may be recovered from such distrainer as if such order were a public demand.

Section 93—

Proceedings of officers, &c., subject to revision and orders of Court.

All proceedings under this Act of the officers appointed to hold sales of distrained property shall be subject to the revision and orders of Collector to which they respectively are attached, and the Collector may require the submission of such reports and statements of business performed by such officers as may be thought necessary.

Section 94 (amended)—

Second proclamation of sale.

When a suit has been instituted to contest the demand of a distrainer and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Court shall issue an order to the officer appointed to conduct the sale of such property, and furnish a copy of such order to the distrainer, authorizing the sale of the property; and on the application of the distrainer, which shall be made within five days from the receipt by him of such copy of such order, such officer shall proceed to sell such property or cause it to be sold in the manner prescribed in section 85, unless the amount adjudged to be due, with cost of distress and cost of the suit, be intermediately paid.

damages in favour of the plaintiff as the circumstances of the case shall seem to require, and may decree the costs of the suit to be paid by the distrainer.

Any person whose property has been distrained for arrears of rent alleged to be due from another, may institute a suit against the distrainer.

96. If any person shall claim as his own property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainer and such other person to try the right to the possession of the property in such Court, and in like manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand. When any such suit is instituted, the property may be released upon security being given for the value of the same. If the claim is dismissed, the Court shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer, and for payment of such costs of suit to such distrainer as to such Court shall seem fit. If the claim is upheld, the Court shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case may seem to require: Provided always that no claim to any produce of land liable to distraint under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the person entitled to the rent of the land; nor shall any attachment in execution of a judgment or decree of any Court prevail against such prior claim.

Persons prevented from suing in time to save their property from sale may sue for damages.

97. If any person, whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from sufficient cause from bringing a suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by sections 82 and 96, and his property is in consequence brought to sale, he may nevertheless institute a suit under this Act to recover damages for the illegal distress and sale of his property.

Also persons aggrieved by any illegal act of distrainor.

98. If any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due otherwise than according to the provisions of this Act, or if any distrained property shall be lost, damaged, or destroyed by reason of the distrainer not having taken proper precautions for the due keeping and preservation thereof, or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act, the owner of the property may institute a suit under this Act, to recover damages for any injury which he may have thereby sustained.

Section 98.

Also persons aggrieved by any illegal act of distrainer.

If any person empowered to distrain property, or empowered for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act, or if any distrained property shall be lost, damaged, or destroyed by reason of the distrainer not having taken proper precautions for the due keeping and preservation thereof, or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act, the owner of the property may institute a suit under this Act to recover

Unlawful distraint.

99. If any person not empowered to distrain property under sections 68 and 70 of this Act, nor employed for the purpose under a written authority by a person so empowered, shall under colour of this Act distrain or sell, or cause to be sold, any property, the owner of the property may institute a suit under this Act to recover damages from such person for any injury which he may have sustained from the distraint or sale. The said person shall, when the act complained of does not amount to criminal trespass, be liable to fine which may extend to three hundred rupees or to imprisonment, simple or rigorous, which may extend to two months, or to both, in addition to any damages which may be awarded against him in such suit.

Time for commencing suits for damages.

100. Provided always that any suit which may be instituted under any of the last three sections shall be commenced within three months from the date of the occurrence of the cause of action.

damages for any injury which he may have thereby sustained.

Explanation.—A suit for damages under this section shall not bar a prosecution under the next succeeding section, or under the provision of the Penal Code, or of any law for the time being in force.

Section 99.

If any person not empowered to distrain property under sections 68 and 70 of this Act, nor employed for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property, *or if any person being empowered to distrain does distrain or sell, or cause to be sold*, any property in a manner contrary to the provisions of this Act, the owner of such property may institute a suit under this Act to recover damages for any injury which he may have sustained from the distraint or sale. The said person, when the act complained of does not amount to criminal trespass, or theft, or robbery, as the case may be, shall, in addition to any damages which may be awarded against him in such suit, be also liable to a fine which may extend to three hundred rupees, or to imprisonment, simple or rigorous, which may extend to two months, or both. The person whose property has been distrained, or the Collector or any person acquainted with the facts, may institute a prosecution under this section.

Explanation.—The following acts are contrary to the provisions of this Act within the meaning of this section, namely,—

(*a*) to realise, or attempt to realise, a current or prospective demand by process of distraint, or by prohibiting a ryot, or any number of ryots, from cutting standing crops till such ryots shall have paid such current or prospective demand;

(*b*) the interference of persons in receipt of rent, their peons, sowars, or other agents, to prevent the cutting, threshing, harvesting, or disposal of ryots' crops otherwise than in the manner prescribed in section 74;

(*c*) it is a contravention of this Act within the meaning of this section for a landlord or other person in receipt of rent to call upon the ryots of a village or estate, or part thereof, to pay collectively to such landlord or person in receipt of rent a lump sum on pain of not being allowed to cut their crops without such payment;

(*d*) it is a contravention of this Act within the meaning of this section for a proprietary co-sharer or his assignee to distrain for his separate share of rent;

(*e*) it is a contravention of this Act within the meaning of this section to distrain for an arrear of more than six months' standing;

(*f*) it is a contravention of this Act within the meaning of this section to distrain for any sum in excess of the sum payable for the same land the previous year, unless a written engagement for the payment of such excess has been executed.

(*g*) it is a contravention of this Act for a distrainer to prohibit a cultivator from reaping his crops, whether such crops have been distrained or not.

Procedure on resistance to distraint, &c.

101. If any person shall resist a distraint of property duly made under this Act, or shall forcibly or clandestinely remove any distrained property, *the Court* which would have jurisdiction in a suit for the rent for which such distraint was made, shall, upon complaint being made within fifteen days from the date of such resistance or removal, cause the person accused to be arrested; and if the offence be proved and the offender be the owner of the property, shall order him to be imprisoned in the civil jail for six months, or until the whole arrear due to the distrainer, with all expenses and costs, shall be paid or levied by attachment and sale of the property of the offender under warrant of the Court. If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment for a period not exceeding two months.

No appeal from any decree of the District Judge for money below one hundred rupees, unless it involve the right to enhance rent or a title to land.

102. Nothing in this Act contained shall be deemed to confer any power of appeal in any suit tried and decided by a District Judge, originally or in appeal, if the amount sued for, or the value of the property claimed, does not exceed one hundred rupees, in which suit a question of right to enhance or vary the rent of a ryot or tenant, or any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto, has not been determined by the judgment.

Review of judgment.

103. No application for a review of any judgment or order passed in any suit brought under the provisions of this Act shall be received by any Court after the expiration of thirty days from the date of such order or judgment, but nothing in this section contained shall be deemed to apply to the High Court of Judicature at Fort William in Bengal.

Small Cause Court not to have jurisdiction.

104. Nothing in this Act contained shall be deemed to confer upon any Court sitting as a Court of Small Causes cognizance of any suit brought under the provisions of this Act, of which it would not have had cognizance if this Act had not been passed.

Power to issue process free of charge.

105. If in any case the Court is satisfied that a party is unable to pay the cost of any necessary process in any suit under this Act, it may direct such process to be served free of charge.

Application of Act.

106. This Act shall take effect in those districts (of Behar?) subject to the Lieutenant-Governor of Bengal, to which the said Lieutenant-Governor shall extend it by an order published in the *Calcutta Gazette*, and thereupon this Act shall commence and take effect in the districts named in such order at the day and time which shall be in such order provided for the commencement thereof.

Certain enactments to cease to have operation in places in which this Act takes effect.

107. When and so soon as this Act shall commence and take effect in any district, the various provisions mentioned in Appendix (I) hereto

Section 101.

Procedure on resistance to distraint, &c.

If any person shall resist a distraint of property duly made under this Act, or shall forcibly or clandestinely remove any distrained property, *the Collector* shall, upon complaint being made within fifteen days from the date of such resistance or removal, cause the person accused to be arrested; and if the offence be proved, and the offender be the owner of the property, shall order him to be imprisoned in the civil jail for six months, or until the whole arrear due to the distrainer, with all expenses and costs, shall be paid or levied by attachment and sale of the property of the offender under warrant of the Court. If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding on hundred rupees, or, in default of payment thereof, to imprisonment for a period not exceeding two months.

annexed shall cease to have operation or effect in such district, save so far as they repeal or modify any other Regulation or Acts, and save so far as regards suits of proceedings which before the time of the commencement of this Act shall have been instituted before any Collector.

Pending suits to be carried on under former practice.

108. Whenever any suit or other proceeding under the provisions of the Acts in the Appendix (I) mentioned, or of any of them, shall, at the time when this Act comes into operation in any place, have been instituted before any Collector or other officer having under the provisions of the same Acts, or of any of them, jurisdiction in such suit or proceeding, and all appeals therein shall be heard and determined, and execution of any decree or order therein shall be had, and the practice and procedure therein shall be such and the same as if this Act had not been passed.

Act not to effect powers conferred by the Chota Nagpur Tenures Act.

109. Nothing in this Act contained shall be deemed to take away or abridge any power or authority conferred by an Act passed by the Lieutenant-Governor of Bengal in Council, entitled an Act to ascertain, regulate, and record certain tenures in Chota Nagpore, on any person appointed to be a Special Commissioner thereunder, or on the Commissioner of the Division of Chota Nagpore.

Act VII of 1868 saved.

110. Nothing in this Act contained shall in any way affect any of the provisions of Act VII of 1868 of the Council of the Lieutenant-Governor of Bengal for the recovery of arrears of land revenue and other demands recoverable as arrears of land revenue.

Short title.

111. This Act shall be called "The Landlord and Tenant Procedure Act, 1869."

Section 111 (amended)—This Act shall be called the "Behar Rent Act, 1878."

APPENDIX A.

(*Referred to in Section* 10 *B.*)

I (A. B.) do solemnly declare that I did personally (or by my agent C.D.), on day of tender to E.F. a chitta in accordance with the provisions of section 2*a* of the Behar Rent Act of 187 , and that the chitta so tendered, which is herewith attached, is of such a nature that the said E.F. is bound, under section 10*a*, to give a counterpart kabuliyat in conformity with the terms of the said chitta, and I do further solemnly declare that the said E.F. refused to give such counterpart.

Kabuliyat.—I therefore pray that the Court call upon the said E.F. to show cause why he should not give such kabuliyat aforesaid; and that on his failing to show cause, the Court grant a kabuliyat under its seal and signature in conformity with the terms of the chitta herewith attached.

APPENDIX B.

(*Referred to in Section* 11 *A.*)

TENDER OF RENT.

No. Maozá Pergunnah Zillah.
Name of Asami
Amount
By whom brought
On account of annas kist of year
Due on day of 187
Dated
Signature

APPENDIX C.

(Referred to in Section 11 *B.)*

TENDER OF RENT.	RECEIPT OF RENT.
No. Maozá	No. Maozá
Pergunnah Zillah	Pergunnah Zillah
Name of Asami	Name of Asami
Amount	Amount
By whom brought	By whom brought
On account of annas kist of year	On account of annas kist of year
Due on day of 187	Due on day of 187
Dated	Dated
Signature of ryot	Signature of zemindar or agent
Signature of putwari	Signature of putwari

APPENDIX D.

(Referred to in Section 47.)

I, A. B., of, &c., do solemnly declare that I did personally (or by my agent C.D.), on the day of tender payment to E. F. at his mâl cutcherry (or at the place where the rent of the lands at held or cultivated by me under or from the said E. F. are usually payable of the sum of Rupees as and for the whole amount due from me in respect of the rent of the said lands from the month of to the month of both inclusive. I further declare that the said E. F. refused to accept the said sum so tendered (or to give me a receipt in full forthwith for the same); and I do declare that, to the best of my belief, the sum of Rupees so tendered, and which I now desire to pay into Court, is the full amount which I owe to the said E. F. on account of the rent of the said lands from the month of to the month of both inclusive, and that I owe the said E. F. no further sum on account of the rent of the said lands.

SCHEDULE E.

(Referred to in Section 47.)

COURT OF

Dated the *day of* 188

To E. F. of, &c.

WITH reference to the within declaration, you are hereby informed that the sum of Rupees therein mentioned is now in deposit in this Court, and that the above sum will be paid to you or to your duly authorized agent on application; and take notice that if you have any further claim or demand whatsoever to make against the said A. B. in respect of the rent of the said lands, you must institute a suit in Court for the establishment of such claim or demand within six calendar months from this date, otherwise your claim will be for ever barred.

[Copy of declaration in Schedule D to be attached.]

APPENDIX F.

(Referred to in Section 47.)

I, A. B., do solemnly declare that C. D. and E. F., &c., have made a claim upon me for rent amounting to Rupees , that the said C. D. and E. F., &c., are rival rent claimants, and that I am in doubt as to which of them is entitled to the whole or part of the rent claimed. I do therefore desire to deposit the amount of Rupees in this Court to the credit of said C. D. and E. F., &c., and I declare that the amount of Rupees which I desire to deposit is the full amount which I owe for the rent of the land held by me from the month of to the month of inclusive, to the said C. D. and E. F., &c., to any or all of them.

APPENDIX G.

(Referred to in Section 47 A.)

COURT OF

Dated

To C. D., E. F., &c.

WITH reference to the within declaration you are hereby informed that the sum of Rupees mentioned therein has been deposited in this Court to the joint credit of you and E. F., G. H., &c., and that the above sum will be paid to you and the said E. F., G. H., &c., on your joint application; and take notice that failing to make such joint application, you and the said E. F., G. H., &c., are bound to settle among yourselves by regular suit in Civil Court the amount of the said deposit to which you are severally entitled. If within three years of the date of the deposit you and the said E. F. and G. H., &c., do not make such joint application, or if within three years aforesaid you do not obtain an order from a competent Civil Court determining the part of the said deposit to which you are entitled, the deposit will be returned to the said depositor A. B., and your claim will be for ever barred.

[Copy of declaration in Appendix F. to be attached.]

APPENDIX H.

(Referred to in Section 80.)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

A. B., Distrainer.

(Name, description, and address of the owner of the property.)

WHEREAS the said A. B. has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said A. B. or to institute a suit in the Court of to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of 18 .

APPENDIX I.

(Referred to in Section 107.)

DATE AND NUMBER OF ACT.	TITLE OF ACT.	EXTENT OF REPEAL.

Note by Sir Richard Garth *on Mr. Field's Digest.*

Article 3.

" and according to its decision on this point *must exercise jurisdiction or refuse, &c.*"

This would seem an incorrect expression as applied to rent cases tried *in Civil Courts.* It would have been perfectly correct as *applied to the Collector's Court,* because that Court had *no jurisdiction* to entertain a suit at all, unless the relation of landlord and tenant existed between the parties. But the Civil Court *has jurisdiction* to try all suits generally between parties, whether the relation of landlord and tenant exists between them or not. Of course when a suit is brought for rent by a plaintiff claiming to be the defendant's landlord, if the relation of landlord and tenant is found not to exist between them, the suit must be dismissed; but the dismissal would not be upon the ground of *want of jurisdiction,* but because the plaintiff has *failed to prove his case.*

Article 4.
Section 1.

" at the time of executing such contract." Should not this be " at the time when such contract is made?" The word " executed" applies to a written *contract only,* whereas the contract of tenancy may at present be written or verbal.

Illustration D.

I confess that I cannot understand this proposition or the cases upon which it seems to be founded. The plaintiff in a resumption suit merely seeks to resume and to be at liberty to assess, at fair rents, lands which the defendant has wrongfully held as lakhiraj. The decree for the plaintiff in such a suit is that he is entitled to resume and assess the land, the alleged lakhiraj being invalid.

I see nothing in such a decree *which should create a tenancy* between the plaintiff and defendant. And if the defendant were to hold the land for more than twelve years after the decree without the landlord getting the rent assessed, and without the defendant himself paying any rent for it, I do not see why he should not obtain a title to it by adverse possession.

However, there are the decisions; and there is Sir Barnes Peacock's express statement of the law, although it does not appear to have been strictly necessary in order to the decision of the particular case. The question is whether the Legislature will think it right to confirm authoritatively the doctrine which these decisions lay down.

Note 2 to this Article.

Query as to this note.

1stly.—Are contracts made by a minor, notwithstanding section 11 of the Contract Act, *absolutely void,* or *voidable only* at the minor's option? I should say they are or ought to be *only voidable.*

Could a lessee, for instance, having taken a lease from a minor and having entered into possession and had the benefit of two lucrative seasons, throw the lease up afterwards whenever it suited his purpose? Or could the lessee after having taken possession avoid such lease at all?

2ndly.—Could the minor avoid the lease *before he came of age,* whether the lessee could avoid it or no?

3rdly.—Could not a minor lessee avoid a lease for *the future* even for necessary lodging? Is he *ever* liable for necessaries *which have not actually been supplied?* As, for example, suppose he were to enter into a contract for the supply to him of so many loaves a day for a twelve month, would the contract be binding on him, except so far as he had enjoyed the benefit of it? I think not. I consider that the same principle applies to a contract for future lodging, *Hands* v. *Slaney,* 8 Term Reports, 571, which in the case referred to by Woodfall, was an action *for use and occupation:* no doubt a minor would be liable for that.

The just and proper rule would seem to be that leases both *to* and *by* minors should be *voidable only at their option.*

Article 3.
Note 3.

Mr. Field's note upon this article is, in my opinion, deserving of the highest consideration. The Statute of Frauds did not avoid *all parol leases,* but only those made for more than three years. But in this country the necessity for having leases in writing is *much greater* than it was in England. And if such a plan as Mr. Field suggests could be enforced, viz., that of having a printed register of forms for leases in the shortest and simplest language kept by every zemindar, to be filled up with tenant's names and the amount of rent, and the description and quantity of land, I believe that the result would be most beneficial, and that it would put a stop to a vast amount of litigation. The only difficulty in the scheme which suggests itself to me is that many of the ryots cannot read or write, and consequently that the landlord's agent might impose leases upon them the meaning of which they might not understand.

But this difficulty could be met by *by all leases and transfers of leases being registered in the registry office,* and the contents explained to both parties by the Registrar at the time of registration. This would, in my opinion, be as great an advantage as having the leases themselves in writing, and a small registration fee might without any injustice to the ryot and with great advantage to the revenue be imposed in each case.

Article 6.
Proviso, Note 4.

This proviso is perfectly correct, and I conceive that the same principle must apply, whether a man leases land for a larger interest than he has a right to convey, or for an interest which he has no right to convey at all. In either case, if the lessee enters upon the land and pays rent to the grantor, both parties are by the law of England estopped from denying the lease; and in either case, if the grantor subsequently acquires the estate, or any part of it, which he has professed to convey, that which was before a lease by estoppel would become a lease in interest.

With regard to the concluding paragraph in this note, if the lessee can show that he was induced by the lessor to take a lease which the latter had no title to grant, under circumstances which would amount to *legal or equitable fraud,* the lessee may sue to avoid the lease upon that ground; but he must do so, of course, within a reasonable time from the discovery of the fraud.

Article 7.
Paragraph 4.

Section 18 of the Act XL of 1858 applies only to guardians who have obtained a certificate under the Act. In other cases the rules of Hindoo law apply.

Article 9.
Note 1.

This is a most important question. It is one which has given rise to an immense deal of litigation in England, and it is very desirable that it should be settled by express enactment here. It is unnecessary and undesirable, in my opinion, that any distinction should be made in this country between "privity of estate" and "privity of contract," and between covenants which do, and those which do not, run with the land.

There seems to me no reason why in the case of the transfer or partition of the *lessor's interest*, the obligations between the transferee of the lessor and the lessee should not (so far as they are applicable to the altered state of things) be the same as between the original parties.

The lessee no doubt may be subjected to some inconvenience. It may be less convenient to pay rent, or to be answerable in other respects to several landlords than to one. But these inconveniences are inevitable, and the lessee must be prepared for them when he takes his lease. It rarely happens that the obligations which by the contract of tenancy are incumbent on the lessor cannot be as well performed by one landlord as by another. But with lessees the case is different. It matters very seriously to a landlord whether his tenant is solvent or insolvent: whether he cultivates or manages the property well or ill; whether he is a well-conducted man or a promoter of strife and discord amongst the other tenants. This is why landlords may very naturally object to their tenants' leases being made transferable without their consent; and why more stringent conditions both as regards covenants and conditions are more necessary in the case of transferable than of untransferable leases.

Note 5.

In the case of a *putni* tenure which is made transferable by statute under certain conditions, the transferor is, as a matter of course, absolved from liability to the zemindar when the transfer has been duly made and the conditions observed.

Article 11.
Note, Apportionment of rent.

It is very important that there should be some means less costly and more simple than a suit for apportioning rent, whether on a partition or on a sub-division of the landlord or tenant's interests.

The rule proposed in the case of lessors by the Transfer of Property Bill may work very unfairly. It is a great mistake to suppose that it is immaterial to a tenant how his rent is apportioned in the case of a partition. If an undue sum is appropriated to one portion, how can the tenant hope ever to sell or sub-let that portion at a fair price?

A fair apportionment is as important to the lessee as it is to the lessor; and if the parties cannot agree upon the apportionment, the District Judge, or some other authority, should have the power of appointing an independent surveyor to view the property and make the apportionment. In each case the expense should fall upon the party whose act renders the apportionment necessary. It would be desirable to lay down rules, as suggested by Mr. Field, for the guidance of any surveyor who may be appointed; and in cases where the rent is above a certain value, an appeal, if it were thought expedient, might be allowed to the District Judge.

Article 11.
Rule 4.

Surely in this case, unless *all the parties* agree that the tenant shall pay his rent jointly to the proprietors, there ought to be an apportionment of the rent. The proprietors must make some division of the rent *inter se*, unless they hold their shares jointly; and I think that the apportionment should be made whether the partition is of the area of the land or only of individual shares in it.

Article 12.
Case 4.

This should be *at the landlord's option*. If a ryot chooses to abandon his holding and leave the land uncultivated, the landlord may treat the tenancy as at an end, and dispose of the jote as he pleases. But if the landlord does not choose to determine the tenancy, he may hold the ryot to his obligations and sue him for the rent.

Case 5.

The right to eject for non-payment of the rent may be waived, not only by the receipt of rent subsequently accrued, but by any other act on the part of the landlord, which amounts to an acknowledgment that the relation of landlord and tenant is continuing.

Case 7.
Note 6.

I quite agree with Mr. Field that it is of the utmost importance that the Legislature should define what is a reasonable notice to quit in the case of a tenant-at-will or a yearly tenant. In England when a tenant-at-will has paid rent for a year or any aliquot portion of a year, he becomes a tenant from year to year, and his tenancy is then determinable by either party by six months' notice to quit, expiring at the time when his tenancy commenced.

Six months' notice is considered in all cases to be a *reasonable notice*. But here a reasonable notice depends upon different conditions in different parts of the country. So far as the *length* of notice is concerned, six months might be reasonably sufficient in any case; but the *time* at which the annual tenancy should end ought to depend perhaps upon what crops are grown, and when they are cut and carried, &c. I should have thought that each district ought to fix the time when it would be most reasonable to terminate these annual tenancies;

and that it should be then left to the Local Government to make rule in each district accordingly. As it is, cases of ejectment constantly come up upon appeal to the High Court with no evidence whatever as to what a reasonable notice is, or at what period of the year the tenancy should terminate, and the Court is quite at a loss to know how to do justice in such cases.

Case 8.
Note.

Here again I quite agree with Mr. Field. It is very necessary for the Legislature to define what particular act of disclaimer should work a forfeiture, and what he says as to this is, in my opinion, very sensible and just. But great care must be taken to protect tenants who may be placed in a difficulty by reason of adverse claims to their landlord's interest. As, for instance, suppose a ryot to have held under A for upwards of 12 years, and to have acquired right of occupancy. A dies. B and C both claim to be entitled to the ryot's rent—B under an alleged sale from A, C as devisee under A's will. B makes the first claim upon the ryot and obtains a year's rent. C then claims the rent from the ryot, and B sues him for further rent.

The ryot honestly believing C to have the best claim, sets up his title as against B. In a case of this kind there clearly should be no forfeiture.

Article 43.

There is no doubt that these provisions require legislative explanation and enlargement. The queries which Mr. Field suggests deserve careful attention, and there are others which have arisen in the Courts, and which can hardly be considered as satisfactorily settled.

I should have thought it clear that the words "of a similar description and with similar advantages" ought not to refer, in the large majority of cases, to the state in which the ryot took the land in the first instance, because he probably took it in a state of jungle or waste, and the merely bringing it into cultivation by ordinary labour and appliances would naturally have produced a great improvement. Having regard to the uncultivated state in which he first took it, he would probably have had to pay for the first few years a very small rent—a rent which would imply that he took it for purposes of improvement—and I should have thought that the words in question, in such a case, ought in fairness to refer to the state into which the tenant brought it by a proper and usual course of cultivation.

The second clause in the sentence seems to have reference to *permanent improvements* either in the value of the produce or the productive powers of the soil, which have not been the result of the tenant's ordinary or extraordinary labour or outlay, but have been brought about by some other agency, as, for instance, improved irrigation introduced by the Government or the landlord, or by some other agency than that of the ryot himself; a general and permanent increase in the value of the crops which the land produces; the increased value of the soil in consequence of a more valuable kind of produce being cultivated, as, for instance, by indigo-factories or jute-mills or cotton-mills being introduced into the locality and the land becoming more valuable for the growth of indigo or jute.

These and similar improvements would naturally form legitimate reasons for enhancing the rent on the second ground.

And it has been doubted whether other improvements of a less permanent character might not also afford ground for enhancement, as, for instance, when the prevalence of a famine in Madras has raised the price of cereals in Bengal, or where a large demand for wheat abroad has induced an unusually large export, and consequently a general rise in the price of grain. I should have thought that a mere casual or temporary rise in the price of produce ought to afford no ground for enhancement; but this subject is very fully and ably dealt with afterwards in Mr. Field's Note.

This third ground of enhancement, again, has given rise to many nice questions, which can hardly be said to have been decided.

Suppose, for instance, a ryot pays, whether under a pottah or otherwise, a defined amount of rent for a particular area, described by metes and bounds, and estimated to contain (say) 25 beeghas. The land when first let was jungle; but in process of time it has become cultivated, and it is then found to contain 30 beeghas instead of 25. Is this a case in which the landlord would have a right to enhance? I think not; because *the entire rent* has been agreed to be paid for *an entire area*, and it is not because the area turns out to be greater or less than the estimated quantity that the rent should be enhanced or diminished.

But if, instead of an entire rent being paid for an entire area, the tenant undertakes to pay at the rate of Rs. 2 per beegha, and the land is afterwards found to contain five or ten more beeghas than it was estimated to contain at first, then the rent should fairly be enhanced or diminished according to the actual quantity which the jote is found to contain.

So, again, whether a particular area is let at an entire rent or at so much per beegha, if an additional piece of land is added to the farm by alluvion or taken away from it by diluvion, the rent ought to be increased or decreased accordingly.

But then there is another state of things which not unfrequently occurs, in which the provisions of section 18 are often erroneously applied. This is when a ryot, without the leave of his landlord, makes an encroachment upon land belonging to his landlord beyond the limits of his original jote.

In such a case the landlord ought to have, and according to the authorities has, the right at his option to treat the tenant either as a trespasser or a tenant as regards the land so encroached upon. He may either eject him as a trespasser if he is not barred by limitation and recover the value of the land as mesne profits, or he may have the rent of the land assessed and recover the amount by way of additional rent. It would not lie in the mouth of the tenant under such circumstances to say that he was not liable to rent, because it was only in his character of tenant of the original jote that he made, and was enabled to make, the encroachment; but the tenant should clearly not be allowed to claim *any occupation right* in land for which he has paid no rent, and which he acquired by wrong.

Article 63.
9 W. R. 162.

I doubt whether the second clause of this Article is either good law or good sense. It seems to me to be putting upon the tenant a burthen which should be thrown upon other shoulders. The tenant may, in perfect good faith, have paid his rent to the first, perhaps the only, claimant of his landlord's interest. Another claimant or claimants may then come forward, the justice of whose claim the tenant may have no means of ascertaining. Why is the tenant under such circumstances to pay rent to the first claimant, unless he, *the tenant*, can show that some other claimant has a better title? I consider that in such a case the tenant ought to have some means of paying his rent into Court, to remain there until the rival claimants have had the chance of settling their disputes *inter se*.

Article 89.

If a suit is brought for enhanced rent after notice of enhancement, the plaintiff, if he fails to establish his right to enhance, *ought clearly not to be entitled* to a decree for rent at the *old rate*, merely because the defendant admits such rent to be due. The plaintiff in such a case *does not sue for the old rent*. By the very terms of his plaint he is *not content* with the old rent, and would *not be ready to receive it in satisfaction of his claim if it were paid* or tendered.

The tenant-defendant, on the other hand, insists *that the old rent* and *that only* is payable, and generally expresses his willingness to pay it; but he repudiates any liability to pay an enhanced rent. If the plaintiff fails to establish such a case, why is he to have decree for that which all along he has been unwilling to accept? Why is he to have a decree because he turns out to be wrong, and the defendant to be right?

If he were to have a decree at all, it clearly ought only to be on his paying the defendant the whole costs of the suit; but in my opinion his suit should be dismissed with costs, and he should be left to bring another suit afterwards for the old rent, running the risk of his claim being barred by limitation. We have decided this in the High Court in several cases.

If the plaintiff establishes his right to enhanced rent, *though not to the full extent which he claims*, he should be entitled, no doubt, to a decree *pro tanto*. In this respect a suit of this kind differs from a suit for a *kabuliyat at an enhanced rent*.—(*See* this explained in the late Full Bench case of the High Court.)

Article 93.

There should be some provision here for a state of things which frequently occurs in suits of this kind. The point has been decided in the High Court, and is generally acted upon I believe; but it is better that it should be made clear by legislative provision.

We will suppose that a landlord brings a suit for ejectment for non-payment of rent which became due on the 1st January 1876. He obtains a decree on the 1st of January 1877, specifying the amount of the arrear, with an order for ejectment if the amount is not paid within fifteen days after the decree. This decree is twice appealed; and on appeal to the High Court, it is amended on the 1st of January 1880. The defendant has then fifteen days to pay the amount.

If he pays it, he continues to be the plaintiff's tenant, and is liable to him for the rent which has become due since the 1st of January 1876. If he does not pay within the fifteen days, he has ceased to be the plaintiff's tenant, as from the time when the suit for ejectment was brought, in which case the plaintiff is entitled to bring a suit for mesne profits from that time. In either case he would be barred, as to part of the claim, by limitation, unless he is saved (as of course he ought to be) by the fact that until the fifteen days had expired he did not know whether he would have to eject the defendant or not, or, in other words, whether the defendant was or was not to be his tenant as from the time when the ejectment was brought.

The uncertainty as to what the defendant will do places the plaintiff in a great difficulty from which he clearly ought to be freed by some express provision in the law.

RICHARD GARTH.

Minute by Sir Richard Garth, *dated 8th January* 1880.

PROPOSED NEW RENT LAW.

MINUTE No. 1.

Whatever differences of opinion may prevail in Bengal upon the subject of the Rent Law, it must be admitted on all hands that Mr. Field deserves our best thanks for his excellent Digest, as well as for his able Note upon the two main questions—"Transferability of Ryots' Holdings" and "Enhancement of Rent."

When we consider that a large proportion of the community is dependent upon the land for its support, and how much of the business of the Civil Courts arises out of disputes between landowners and their tenants, it is obvious how necessary it is, for the peace and prosperity of the country, that the Rent Law should be satisfactorily settled. Mr. Field's Digest places that law before us very clearly in its present shape, and it is to be hoped that all who are interested in the subject will assist the Government with their view upon it.

I have already submitted to the Committee some notes upon the the various sections of the Digest, and I now propose to make a few remarks upon the two main questions which are discussed in the Note.

Transferability of Ryots' Holdings.

And, *first*, as to the transferability of ryots' holdings. And here I am glad to observe that Mr. Field's arguments are pressed (rather unduly as it seems to me) against the zemindar, and in favour of the ryot. The zemindars being the more powerful and educated body are sure to find means of having their claims advocated, and their views explained to the Legislature; while the ryots, being, as a rule, the weaker and uneducated class, and having comparatively few friends in high places, are more likely to have their claims overlooked and their interests disregarded. I am glad, therefore, to find that in some respects at least they have found a powerful supporter in Mr. Field.

Now, before I apply myself to the several arguments against the transferability of ryots' tenures, which Mr Field first advances and then professes to answer, I ought to say that the reason why I think he presses hardly against the zemindars is that he does not sufficiently consider what their status was and is under the Permanent Settlement, and what alteration was made in that status by the Rent Act of 1859.

He admits very fairly at the outset that before the period of British supremacy in India, tenures, as a rule, were *not alienable;* and also that at and after the time of the Permanent Settlement it was always considered, both by the Legislature and the Courts, that ryots' tenures, whether they were permanent or temporary, were *not transferable.*

By the Permanent Settlement zemindars were (subject to certain restrictions which are immaterial to our present purpose) left free by the Legislature to let their unoccupied land to ryots upon whatever terms they thought proper. They had almost as much freedom in that respect as landlords have in England. The terms upon which they let the land were a matter of contract, and the principle of demand and supply (whether of ryots or land) usually regulated those terms.

Mr. Field expresses some doubt whether a khoodkhast ryot, as long as he paid his rent, could be turned out of his holding by his landlord. But however this may be, it is certain that, before the passing of the Rent Law in 1859, a landlord could, and did almost at pleasure, rid himself of objectionable tenants.

To obviate this apparent injustice, Act X of 1859 protected a ryot from eviction after twelve years of occupancy, and prevented the landlord from enhancing his rent, after that period except under certain conditions.

Now, however wise and politic this provision might have been, it seems to me impossible to deny that it operated as an invasion of the landlord's rights as conferred upon him by the Permanent Settlement; and the only equitable ground upon which such an invasion could be justified would seem to be this, that if a ryot had proved himself as a good tenant by cultivating his land and paying his rent satisfactorily for so long a period as twelve years, it was only fair to him, and no real injustice to the landlord, to continue him in his occupation and to prevent his being ejected without some sufficient reason.

But, assuming this to be the true view of the matter, what becomes of the justification for invading the landlord's rights, if the ryot is to be allowed, as soon as he has acquired his right of occupancy, to get rid of it altogether? If the *equity* to the landlord consisted in his being permanently secured a good tenant, what becomes of the equity if you allow the ryot to transfer his interest?

It seems to me that this view of the zemindar's position is rather lost sight of in Mr. Field's note; and I think, moreover, that it is hardly fair to suggest that zemindars ought not to object to the transferability of ryots' tenures upon the ground that the measure would be "*merely unpleasant or injurious to themselves.*"

It strikes me that this is just the ground upon which zemindars, or any other class of men, are perfectly justified in objecting to any public measure. And considering that in this particular instance the Legislature are dealing substantially with the two great branches of the agriculural interest—landlords on the one hand and tenants on the other—the former have at least a right to insist that no measure ought to be passed which would be unpleasant or injurious to them, unless some solid advantage is to result from it to the general public.

Having premised thus far, I will now say a few words with reference to some of the arguments which are advanced by Mr. Field against the transferability of ryots' tenures, and the answers which he makes to them.

(1.)—As to the first, I do not think it necessary to make any remarks.

(2.)—As to the second, I suppose it may be taken for granted that when the ryots have the means of mortgaging their property they will be almost sure to do so as soon as from bad crops, extravagance, or other reasons they begin to want money. They are not likely to be wiser in these respects nor more provident than their betters; and from the highest to the lowest of agricultural community, they will find plenty of people in this country to set them an example of improvidence.

It may be perfectly true, as Mr. Field says, that men are not made thrifty by Acts of Parliament or by any other Acts; but I think it is equally true, on the other hand, to give a poor population, like the Bengal ryots, the means of selling or mortgaging their tenures at pleasure, is a very certain means of making them *improvident* and *unthrifty.*

I should have supposed that there was a good deal of weight in this argument (No. 2), and that it would be far better when a ryot has proved himself to be a good cultivator by a twelve years' occupation to try and keep him where he is, than to tempt him to aliene his interest and find a home elsewhere.

(3.)—The third argument, as Mr. Field says, is a continuation of the first, and I must say that it seems to me almost a necessary, and certainly a very lamentable consequence of allowing ryots to mortgage their property that they should be placed at the mercy of mahajuns, and thus be deprived of their permanent interest in the land, which they or their forefathers have earned by good conduct.

With regard to the suggestion that the Court should be empowered to unrip all transactions with the mahajuns, without regard to any contract which the ryot himself might have made, and to cut down the mahajun's claims to the sums actually advanced and interest at 12 per cent., I must say that I disapprove of the principle as extremely mischievous and unjust.

A ryot who, with his eyes open chooses to take a contract with a mahajun or any one else, ought (in the absence of any fraud or collusion) to be bound by his bargain. Nothing can be more immoral or impolitic, in my opinion, than to teach any set of men that, however binding the engagements which they may have entered into with mahajuns, and others, the law will disregard those engagements, and mould the terms or the bargain in each case according to some supposed principles of equity invented by the law itself.

(4) and (5.)—I cannot presume to give any opinion as to whether mahajuns are likely to buy up ryots' holdings or no. But if they do so, I should think it might be a very serious question what is to become of the ryots and their families.

(6), (7), and (8.)—I am not sufficiently conversant with the subject to discuss arguments (6), (7), and (8).

(9.)—As to this objection, I should have said, even from my own comparatively short experience in India, *first*, that lattials are by no means so unfrequent now as Mr. Field would lead us to suppose; and, *secondly*, that they are not the only means of annoyance which a zemindar has to fear from his rival. The variety of mischief which landowners will invent to harass a hostile neighbour is almost infinite. And I can hardly conceive a greater source of irritation than for a rival zemindar to buy up a number of ryots' holdings in the middle of his neighbours' estate, and to use his influence and position so obtained to create disaffection and disloyalty amongst his neighbours' ryots.

It is suggested that annoyances of this kind may always be prevented by a landlord buying up all his tenants' holdings which are for sale; but, in the first place, it is not always convenient for landlords to make such purchases; and, in the next place, if tenures are made generally transferable, a ryot may of course sell to whom he will without giving his landlord any right of pre-emption.

(10), (11), and (12.)—This subject I have already partially dealt with in my former remarks.

It seems to me impossible to contend, with any show of reason, that it is no injustice to a landlord to deprive him of the right, which he has by law, of selecting his own tenants; and I confess that I cannot view such injustice in the light of a "*sentimental grievance.*"

If a landlord has once sold his tenant's interest under a decree, or if there is any custom to aliene ryots' tenures, of course the injustice ceases. But to make such tenures alienable against the will of the landlord seems to me very hard.

(13.)—Here, again, I must say that the answer suggested to the zemindars' argument appears to me neither fair nor reasonable. If tenants after twelve years' occupation are not only to acquire a permanent interest in their lands, but also the right of imposing upon their landlords any strange and ineligible tenant they please, I should think that any prudent landlord would naturally, and very properly, protect himself, if he could, from being placed at so great a disadvantage. I have ascertained from the very best authority that in the more recently cultivated districts in the Central Provinces it has become almost a system for landlords to turn out their ryots after a certain period of their occupancy for the very purpose of preventing them from acquiring a permanent interest in their tenures: and I know also from the best authority that this is considered only the natural result of the occupancy right system.

It strikes me that the latter portion of this answer partakes much more of the nature of a threat than does the supposed argument of the zemindars; and I sincerely hope that, in the interests of justice, the "stroke of the pen" which is hinted at may never be attempted.

(14.)—I daresay that it might be very wise and advantageous to both parties to commute rents in kind into money payments; but so long as the rent is paid in kind, it would obviously be an additional reason why a landlord should not be deprived of the right of selecting his own tenant.

It is very probable that in dealing with Mr. Field's arguments I may have been induced to look at the matter rather too much from an English point of view, and, if so, I hope I may be corrected by those who have more experience of the subject. I certainly do consider, rightly or wrongly, that the principles which ought to regulate any change in the Rent Law are those of strict justice to both parties; and that it would not be justice to the zemindars to depart in essential particulars from the relations between them and their ryots, which were created by the Permanent Settlement.

I now come to deal with the arguments in favour of making occupancy holdings transferable.

The first is that by making the tenant's interest saleable you would give it an increased value; you would be creating a number of small properties, the owners of which would gradually form a sort of peasant proprietorship, such as is found in France and other countries.

Now, I do not pretend to know enough of the nature or habits of the Bengal ryots to be able to form a correct judgment as to whether they are likely, under any circumstances, to become a prosperous and happy peasant proprietary. But if thrift, prudence and content are qualities which would tend to make them all this, I much doubt whether the giving them the right to sell or mortgage their interests is likely to produce those good qualities.

If they were naturally a provident and saving people, and if the increase in their families could only be controlled so as to bear something like a fair proportion to their means, it might be different. But if we are to trust, not only what we see, but what we are constantly hearing from those who know them best, they are not a prudent or a saving people.

They beget and marry sons and daughters without the least considering whether the small jote, which is sufficient to support ten people, is sufficient to support fifty. They appear to spend the proceeds of a good harvest, without laying up any sufficient store against a bad one; and can it be doubted that when hard times come upon them, either from over-population or bad harvests, they will sell or mortgage their little property if you only give them the power to do so?

I should have thought that the most effectual way of protecting such people and preventing them from wasting their substance would be to secure them a permanent interest in their property by prohibiting the alienation of it in any shape or way. They might be allowed to underlet in the case of minors, lunatics, or others labouring under disability; and some means might be taken for protecting (for a time at least) present interests which have been created by way of under-lease.

But I should have said that, with these exceptions, it would be more prudent to prevent under-letting altogether.

Enhancement of Rent.

I now proceed to discuss the question of "Enhancement of Rent."

I pass by the early part of Mr. Field's Note upon this subject, because I suppose that most people will agree with what he says in page 225, that the whole course of legislation previous to 1859 has recognized the right of enhancement of money rents as residing in the landlords.

And I suppose it to be equally clear that the Act of 1859 intended to give them that right. It would indeed have been in the highest degree unjust to have given the ryot a permanent interest, as against his landlord, after a twelve years' occupancy, without giving the landlord the right to increase his rent, as against the ryot, as occasion and justice might require.

But what, as it seems to me, the landlords have some reason to complain of in this respect in the Act of 1859 is the great difficulty which is placed in their way by the language of the first ground of endancement.

If a landlord for a certain number of years, either from undue leniency towards his tenants, or from a hatred of litigation, had allowed the rents of his occupation ryots to remain for some years without enhancement, it might be, and in many cases has been, found impossible, either for him or his successors, to raise them again to anything like a fair standard. "All that the rule comes to," as Mr. Field justly observes, "is this, that one ryot can be made to pay as high a rent as another ryot of *the same class*. It affords no means of raising the rate of rent payable by the class generally."

I believe that an immense deal of dissatisfaction and litigation has arisen from the limited form of this rule; and that it would only be just to adopt Mr. Field's suggestion to allow landlords to enhance the rents of their occupation ryots to what is the fair customary rental value of lands in each particular locality without confining the enquiry to any special class of holdings.

It might be quite right to take into consideration the relative advantages, both as regards soil, situation and otherwise, of each holding; to make some deduction from the ordinary rent in the cost of occupation ryots and to place any reasonable limit against increasing the rents too largely at any one time; but it does seem hard (and certainly not a wholesome example for the future) to debar landlords for ever from raising their rents to a fair value, because they or their ancestors may from mistaken kindness or liberality towards their tenants, have forborne for many years to press them for increased rent.

With regard to the third ground of enchancement, I have already remarked upon it in the notes which I have made upon the Digest.

It remains therefore only to consider the second ground of enhancement, *viz.*, "that the value of the produce, or the productive powers of the land, have been increased otherwise than by the agency or at the expense of the ryot."

And here, again, Mr. Field very clearly points out the distinction between the increase of the value of produce, which is due to *general*, and that which is due to *special*, causes.

The latter there would probably be no difficulty in dealing with in each case as the question arose.

The former is, of course, a subject of very wide application, and if prices were to increase, might, unless some general mode of adjustment were introduced, be a source of litigation throughout the country.

I therefore quite think with Mr. Field that it would be highly desirable to devise some general rule by which the value of produce could be ascertained from time to time all over the country, and the amount of rent adjusted accordingly.

I agree that it is indeed deplorable to see so much litigation arising out of rent disputes; that the Civil Courts in a large number of cases have been found an unsatisfactory means of settling these disputes; and that in the interests of both landlords and tenants, and for the peace of the country, it is in the highest degree important that some other means should be adopted for settling them in the present, and preventing, as far as possible, litigation in the future.

But to that good end, and to bring about something like equality and a fair standard, I think that a commission should be formed in each district, which I would suggest (in accordance with Mr. Field's view) should consist of three persons,—one chosen by the ryots, another by the landlord, and a third by the Government. That this commission should settle the present rents of occupation ryots in each district where any difference may be found to exist. That this settlement should be made according to certain specified rules laid down by the Government for the guidance of the commission; and amongst others, that the rent fixed by the commission should not exceed the present rents beyond a certain proportion, and that the rents of occupation ryots should be fixed at a certain rate below the rents of other ryots.

The expenses of the commission might be paid by a charge upon the contending parties, which would probably be far less than the expense of litigation; and if any question of law were to arise, which is not likely, it might be left, if considered advisable, to the decision of the High Court.

If the rent were thus once settled upon equitable principles, I think that some plan might be devised, such as Mr. Field recommends, for adjusting the rents in the future according to the price of produce in each district, leaving questions of enhancement upon other grounds to be settled by the Civil Courts.

It would obviously not be fair to take the price of paddy or of any other special produce as a *general standard*, because produce in the indigo and jute districts might be increasing in value, whilst in the paddy districts it might be going down, and *vice versâ*. The Tithe Commutation Act would hardly afford a fair rule in this and some other respects. But I should think that some general plan might readily be devised for settling in each year the price of produce and consequently the rate of rents, in each district.

RICHARD GARTH.

HIGH COURT,
The 8th January 1880.

Statement of classes of purchasers of Ryots' Holdings and small Under-tenures under execution sales.

BURDWAN DIVISION.

	Nature of tenure.	Purchaser.							Rent.								Purchase-money.								Remarks.
		Mahajun, trader, or money-lender, &c.	Mahajun and zemindar.	Zemindar, service talookdar, &c.	Cultivator and ryot.	Zemindar and cultivator.	Not stated.	Total.	Under Re. 1.	Above Re. 1 and under Rs. 5.	Above Rs. 5 and under Rs. 10.	Above Rs. 10 and under Rs. 20.	Above Rs. 20 and under Rs. 100.	Above Rs. 100.	Not stated.	Total.	Under 1 year's rent.	Above 1 year and under 5 years.	Above 5 years and under 10 years.	Above 10 years and under 20 years.	Above 20 years and under 50 years.	Above 50 years.	Not stated.	Total.	
	Tenures, &c.— (A)—(1)	39	...	27	26	...	8	100	2	16	14	22	22	22	2	100	54	30	3	9	2	...	2	100	
	(B)—(2) ...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(C)—(3) ...																								
	Ryots' holdings, &c.— (A)—(4)	97	7	45	81	4	18	252	22	46	49	49	67	7	12	252	67	100	19	13	6	5	12	252	
	(B)—(5)	125	30	213	180	12	56	616	45	148	103	134	143	7	36	616	281	172	72	32	15	8	36	616	
	(C)—(6)	9	...	23	18	...	18	68	4	15	12	13	19	1	4	68	20	28	11	2	2	1	4	68	
	Total of District ...	270	37	308	305	16	100	1,036	73	225	178	218	251	37	54	1,036	442	330	116	56	25	14	54	1,036	
BEERBHOOM.	Tenures, &c.— (A)	...	...	3	...	1	...	4	...	...	...	...	2	2	...	4	1	3	...	...	...	...	...	4	
	(B) ...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(C) ...																								
	Ryots' holdings, &c.— (A)	...	...	...	3	...	1	4	...	2	2	...	...	...	...	4	...	1	1	2	...	...	...	4	
	(B)	61	...	81	101	1	13	257	2	20	27	67	58	4	89	257	62	68	24	8	4	1	90	257	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Total of District ...	61	...	94	104	2	14	257	2	23	29	67	60	6	89	265	63	72	25	10	4	1	90	265	
BAN[illegible]	Tenures, &c.— (A)	9	...	3	3	2	...	17	...	...	4	...	9	4	...	17	11	4	1	1	...	...	...	17	
	(B)	2	...	1	2	...	...	5	...	...	...	1	2	1	1	5	1	3	1	...	...	...	1	5	
	(C)	1	...	...	1	...	1	3	...	...	...	...	3	...	...	3	2	...	...	1	...	...	...	3	
	Ryots' holdings, &c.— (A)	57	...	10	38	20	7	132	12	31	20	19	11	2	37	132	27	27	19	10	5	7	37	132	
	(B)	47	...	22	46	7	5	127	17	29	26	21	14	...	20	127	51	27	14	5	9	1	20	127	
	(C)	14	...	...	25	8	1	47	9	11	2	...	1	...	24	47	4	6	3	8	1	3	24	47	
	Total of District ...	129	...	36	115	37	14	331	38	71	52	41	40	7	82	331	96	66	38	28	15	11	82	331	
MIDNAPORE.	Tenures, &c.— (A)	19	...	55	26	22	9	131	5	31	13	14	31	4	28	131	29	55	11	5	4	1	26	131	
	(B)	...	...	...	1	...	1	2	...	...	...	...	2	...	...	2	1	...	1	...	...	...	...	2	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Ryots' holdings, &c.— (A)	27	...	8	16	1	37	89	3	11	7	1	2	...	65	89	7	4	4	...	6	4	65	89	
	(B)	124	1	195	81	17	76	494	26	118	75	71	66	4	134	494	136	153	43	17	11	1	134	494	
	(C)	38	6	9	22	7	56	138	4	13	13	14	20	1	73	138	30	23	6	3	2	1	73	138	
	Total of District ...	208	7	267	146	47	179	854	38	173	118	100	121	9	300	854	203	234	65	25	23	7	298	854	
HOOGHLY AND HOWRAH.	Tenures, &c.— (A)	2	...	14	3	6	...	25	1	...	4	1	9	10	...	25	10	9	2	2	1	1	...	25	
	(B)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(C)	...	...	2	...	1	...	3	...	1	...	...	1	1	...	3	2	...	1	...	...	...	...	3	
	Ryots' holdings, &c.— (A)	35	1	128	54	49	7	274	9	75	49	47	67	17	10	274	111	87	32	17	8	3	16	274	
	(B)	31	...	91	42	8	12	184	9	34	39	40	41	10	11	184	76	73	16	4	2	2	11	184	
	(C)	29	...	38	53	3	7	130	6	29	24	16	16	1	39	130	25	49	11	6	...	...	39	130	
	Total of District ...	97	1	273	153	67	26	616	24	139	116	104	134	39	65	616	224	216	62	29	11	6	66	616	
	Total of Division ...	765	45	983	822	169	333	3,102	175	630	488	520	546	98	315	3,102	1,028	820	306	143	77	39	590	3,102	

Explanations.

(1) Under head Tenures (A) represents permanent held at rents fixed in perpetuity.
(2) Ditto ditto (B) represents permanent but held at rents liable to variation.
(3) Ditto ditto (C) represents temporary for a term of years.
(4) Under head Ryots' holdings (A) represents at rents fixed in perpetuity.
(5) Ditto ditto (B) represents occupancy rights not at fixed rents.
(6) Ditto ditto (C) other holdings.
(7) The heading 'Mahajuns and Zemindars' includes all cases in which from the description the purchaser might be pur- asing in either capacity.
(8) The heading 'Zemindars and Cultivators' is requisite, as in some districts the purchasers are thus described. Under is head have also been shewn all such persons as from their description might either cultivate themselves or receive the rent, uch as holders of jotes and small tenures.

The above explanations apply to all districts and all divisions.

DACCA DIVISION.

Name of District.	Nature of tenure.	Purchasers.							Rent.								Purchase-money.								Remarks.
		Mahajun and trader, &c.	Mahajun and zemindar.	Zemindar, service talookdar, &c.	Cultivator and ryots.	Zemindar and cultivator.	Not stated.	Total.	Under Re. 1.	Above Re. 1 and under Rs. 5.	Above Rs. 5 and under Rs. 10.	Above Rs. 10 and under Rs. 20.	Above Rs. 20 and under Rs. 100.	Above Rs. 100.	Not stated.	Total.	Under 1 year's rent.	Above 1 year and under 5 years.	Above 5 years and under 10 years.	Above 10 years and under 20 years.	Above 20 years and under 50 years.	Above 50 years.	Not stated.	Total.	
Dacca.	Tenures, &c.—																								
	(A)	107	2	107	11	18	12	257	66	57	32	16	11	4	71	257	32	45	19	18	21	45	71	257	
	(B)	1	...	3	1	...	...	5	...	1	2	1	...	1	...	5	2	1	2	...	...	...	...	5	
	(C)	1	...	...	...	...	...	1	...	...	...	...	...	1	...	1	1	...	...	...	...	...	...	1	
	Ryots' holdings—																								
	(A)	6	9	33	33	7	2	91	21	23	13	5	2	...	27	91	26	14	9	7	2	6	27	91	
	(B)	37	9	11	5	3	...	58	...	6	...	...	...	...	52	58	5	...	...	...	...	1	52	58	
	(C)	5	8	3	...	6	2	24	...	1	...	...	...	...	23	24	1	1	...	...	...	...	23	24	
	Total of District ...	150	28	157	59	34	17	436	87	88	47	22	13	6	173	436	67	60	30	22	28	61	173	436	
Mymensingh.	Tenures, &c.—																								
	(A)	87	1	165	14	13	18	248	23	77	50	35	43	6	14	248	36	438	42	37	38	83	14	248	
	(B)	5	...	4	3	4	3	19	...	4	6	3	5	1	...	19	2	9	6	2	...	...	...	19	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Ryots' holdings—																								
	(A)	12	...	12	13	3	3	43	9	16	5	7	6	...	...	43	9	9	3	10	6	6	...	43	
	(B)	57	...	77	72	20	25	251	9	56	58	41	30	1	56	251	73	70	30	11	8	3	56	251	
	(C)	40	...	14	35	...	7	96	...	...	...	...	...	...	96	96	...	...	...	...	...	...	96	96	
	Total of District ...	161	1	272	137	40	56	657	41	153	119	86	84	8	166	657	120	130	81	60	62	42	166	657	
Furreedpore.	Tenures, &c.—																								
	(A)	23	10	83	8	92	32	248	9	55	51	47	42	12	32	248	79	82	36	23	8	7	83	248	
	(B)	40	6	54	31	83	9	223	6	55	47	54	48	13	...	223	106	84	23	8	2	...	...	223	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Ryots' holdings— ...																								
	(A)	33	3	50	16	48	24	174	7	64	45	31	18	2	7	174	100	49	9	7	2	...	7	174	
	(B)	7	7	56	11	101	177	359	30	146	83	62	33	5	...	359	171	116	43	23	4	2	...	359	
	(C)	10	...	3	...	...	...	13	...	1	...	...	...	...	12	13	1	...	...	...	...	...	12	13	
	Total of District ...	113	26	246	66	324	242	1,017	52	321	226	194	141	32	51	1,017	467	311	111	61	18	9	52	1,017	
Buckergunge.	Tenures, &c.—																								
	(A)	379	43	993	36	180	163	1,698	190	465	303	286	335	90	29	1,698	667	485	214	189	95	64	31	1,698	
	(B)	57	17	295	30	123	18	540	19	105	100	113	163	35	6	540	204	209	81	27	11	2	6	540	
	(C)	3	6	...	1	...	...	10	...	2	2	2	2	2	...	10	6	3	...	...	...	1	...	10	
	Ryots' holdings—																								
	(A)	3	...	22	3	13	2	43	9	13	8	7	4	2	...	43	24	15	2	1	1	...	...	43	
	(B)	33	6	97	60	75	7	278	11	75	61	51	71	8	1	278	69	133	48	23	8	...	2	278	
	(C)	2	...	25	2	13	2	44	1	9	8	10	11	...	5	44	21	14	3	1	...	...	5	44	
	Total of District ...	377	72	1,437	132	404	191	2,613	229	669	483	469	586	137	41	2,613	991	859	343	191	118	67	44	2,613	
Tipperah.	Tenures, &c.—																								
	(A)	62	23	123	18	2	25	253	47	49	35	24	51	19	28	253	66	62	29	24	19	26	28	253	
	(B)	21	...	28	6	5	8	68	13	17	11	11	10	4	2	68	23	12	6	10	6	7	2	68	
	(C)	...	...	3	1	7	...	11	2	2	3	1	2	1	...	11	5	1	1	1	3	...	...	11	
	Ryots' holdings—																								
	(A)	4	2	14	2	...	5	27	12	3	3	1	6	2	2	27	9	7	...	2	3	4	2	27	
	(B)	150	5	195	140	11	89	590	23	54	63	67	46	2	344	599	123	76	27	17	6	4	344	599	
	(C)	6	...	17	7	9	19	61	2	9	13	7	7	...	23	61	23	12	2	...	...	1	23	61	
	Total of District ...	246	30	390	183	34	146	1,019	99	134	127	111	121	28	399	1,019	249	172	84	54	39	43	399	1,019	
	Total of Division ...	1,037	1,157	2,492	568	836	652	5,742	508	1,365	1,001	882	945	211	830	5,742	1,884	1,538	629	368	248	221	834	5,742	

CHITTAGONG DIVISION.

Name of District.	Nature of tenure.	Purchaser.							Rent.								Purchase-money.								Remarks.
		Mahajun, trader, or money-lender.	Mahajun and zemindar.	Zemindar, service talookdar, &c.	Cultivator and ryots.	Zemindar and cultivator.	Not stated.	Total.	Under Re. 1.	Above Re. 1 and under Rs. 5.	Above Rs. 5 and under Rs. 10.	Above Rs. 10 and under Rs. 20.	Above Rs. 20 and under Rs. 100.	Above Rs. 100.	Not stated.	Total.	Under 1 year's rent.	Above 1 year and under 5 years.	Above 5 years and under 10 years.	Above 10 years and under 20 years.	Above 20 years and under 50 years.	Above 50 years.	Not stated.	Total.	
Chittagong.	Tenures, &c.—																								
	(A)	77	6	317	106	136	123	765	91	258	133	113	118	9	44	765	218	226	126	74	58	19	44	765	
	(B)	4	...	8	4	...	3	19	1	9	3	3	2	...	1	19	7	7	2	...	2	...	1	19	
	(C)	...	...	2	1	...	2	5	...	2	1	2	...	...	...	5	3	1	...	1	...	...	...	5	
	Ryots' holdings, &c.—																								
	(A)	51	2	187	58	10	168	476	90	185	81	43	19	...	58	476	191	116	54	36	15	6	58	476	
	(B)	15	...	27	17	3	13	75	12	27	9	5	4	1	17	75	22	15	11	6	2	2	17	75	
	(C)	2	...	18	7	1	8	36	4	8	2	...	...	...	22	36	6	3	3	1	1	...	22	36	
	Total of District ...	149	8	559	193	150	317	1,376	198	489	228	166	143	10	142	1,376	447	368	196	118	78	27	142	1,376	
Noakholly.	Tenures, &c.—																								
	(A)	120	5	481	79	37	24	746	87	210	118	114	114	38	5	746	180	261	114	88	64	34	5	746	
	(B)	27	1	126	19	11	17	201	11	53	44	36	46	10	1	201	61	82	27	12	6	12	1	201	
	(C)	4	1	21	4	...	...	30	7	7	3	6	6	1	...	30	9	10	2	2	2	4	1	30	
	Ryots' holdings, &c.—																								
	(A)	23	2	35	29	3	19	111	7	34	28	19	20	3	...	111	35	35	20	8	9	4	...	111	
	(B)	67	1	95	46	33	7	249	4	50	64	80	50	1	...	249	76	116	35	16	6	...	..	249	
	(C)	3	...	7	1	1	2	14	...	2	3	4	4	...	1	14	2	4	3	1	2	1	1	14	
	Total of District ...	244	10	765	178	85	69	1,351	116	356	260	289	270	53	7	1,351	363	508	201	127	89	55	8	1,351	
	Total of Division ...	393	18	1,324	371	235	386	2,727	314	845	488	455	413	63	149	2,727	810	876	397	245	167	82	150	2,727	

PATNA DIVISION.

Name of District.	Nature of tenure.	Purchaser.							Rent.								Purchase-money.								Remai
		Mahajun and trader, &c.	Mahajun and zemindar.	Zemindar, service talookdar, &c.	Cultivator and ryots.	Zemindar and cultivator.	Not stated.	Total.	Under Re. 1.	Above Re. 1 and under Rs. 5.	Above Rs. 5 and under Rs. 10.	Above Rs. 10 and under Rs. 20.	Above Rs. 20 and under Rs. 100.	Above Rs. 100.	Not stated.	Total.	Under 1 year's rent.	Above 1 year and under 5 years.	Above 5 years and under 10 years.	Above 10 years and under 20 years.	Above 20 years and under 60 years.	Above 50 years.	Not stated.	Total.	
Patna.	Tenures, &c.—																								
	(A)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(B)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Ryots' holdings, &c.—																								
	(A)	...	...	3	...	1	...	4	...	...	...	...	...	...	4	4	...	...	...	...	...	...	4	4	
	(B)	2	...	49	...	31	13	95	...	...	...	...	...	...	95	95	...	...	...	...	...	...	95	95	
	(C)	2	...	1	...	...	...	3	...	...	...	...	...	...	3	3	...	...	...	...	...	...	3	3	
	Total of District ...	4	...	53	...	32	13	102	...	...	...	...	...	...	102	102	...	...	...	...	...	...	102	102	
Gya.	Tenures, &c.																								
	(A)	...	3	3	...	...	1	7	...	...	...	...	...	1	6	7	...	1	...	...	...	...	6	7	
	(B)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(C)	...	...	43	1	...	13	57	...	...	...	...	1	1	55	57	2	...	...	...	...	...	55	57	
	Royts' holdings, &c.—																								
	(A)	...	...	7	3	...	4	14	...	...	1	...	1	...	12	14	1	1	...	...	...	...	13	14	
	(B)	1	...	23	...	6	9	39	...	...	...	...	...	...	39	39	...	...	...	...	...	...	29	39	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Total of District ...	1	3	76	4	6	27	117	...	...	1	...	2	2	112	117	3	2	...	...	...	...	112	117	
Shahabad.	Tenures, &c.—																								
	(A)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(B)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Ryots' holdings—																								
	(A)	...	...	93	...	...	352	445	...	...	...	...	...	...	445	445	...	...	...	...	...	...	445	445	
	(B)	...	...	9	...	...	116	125	...	...	...	...	...	...	125	125	...	...	...	...	...	...	125	125	
	(C)	...	...	16	...	...	18	34	...	...	...	...	...	...	34	34	—	...	...	...	...	...	34	34	
	Total of District ...	...	...	118	...	...	186	604	...	...	...	...	...	...	604	604	...	...	...	...	...	...	604	604	
Tirhoot.	Tenures, &c.—																								
	(A)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(B)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(C)	...	...	...	...	...	...	...	...	—	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Ryots' holdings—																								
	(A)	6	6	34	4	48	...	98	5	6	14	12	16	...	45	98	15	24	8	1	3	2	46	99	
	(B)	5	19	99	20	1	7	151	5	10	8	1	8	...	119	151	9	6	8	5	4	...	119	151	
	(C)	2	5	63	9	8	7	94	1	7	10	9	3	...	64	94	12	7	5	3	1	2	64	64	
	Total of District ...	13	30	196	33	57	14	343	11	23	32	22	27	...	228	343	36	37	21	9	8	4	228	343	
Sarun and Chumparun.	Tenures, &c.—																								
	(A)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(B)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Ryots' holdings—																								
	(A)	16	...	128	6	39	26	215	3	17	5	7	11	2	170	215	5	23	8	6	1	...	173	215	
	(B)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Total of District ...	16	...	128	6	39	26	215	3	17	5	7	11	2	170	215	5	22	8	6	1	...	173	215	
	Total of Division ...	34	33	571	43	134	536	1,381	14	40	38	29	40	4	1,216	1,381	44	61	29	15	9	4	1,319	1,381	

BHAGULPORE DIVISION.

NAME OF DISTRICT.	Nature of tenure.	PURCHASER.							RENT.								PURCHASE-MONEY.								REMARKS.
		Mahajun, trader, or money-lender, &c.	Mahajun and zemindar.	Zemindar, service talookdar, &c.	Cultivator and ryots.	Zemindar and cultivator.	Not stated.	Total.	Under Re. 1.	Above Re. 1 and under Rs. 5.	Above Rs. 5 and under Rs. 10.	Above Rs. 10 and under Rs. 20.	Above Rs. 20 and under Rs. 100.	Above Rs. 100.	Not stated.	Total.	Under 1 year's rent.	Above 1 year and under 5 years.	Above 5 years and under 10.	Above 10 years and under 20 years.	Above 20 years and under 50 years.	Above 50 years.	Not stated.	Total.	
BHAGULPORE AND MONGHYR.	Tenures, &c.—																								
	(A)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(B)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Ryots' holdings, &c.—																								
	(A)	2	...	3	5	6	1	17	1	6	4	2	3	1	1	17	...	8	4	3	1	...	1	17	
	(B)	81	9	45	23	36	7	201	6	38	29	16	37	3	72	201	23	71	18	10	5	2	72	201	
	(C)	...	...	2	...	14	...	16	...	...	...	...	1	...	15	16	...	1	...	...	...	...	15	16	
	Total of District ...	83	9	50	28	56	8	234	7	44	33	18	40	4	88	234	23	80	22	13	6	2	88	234	
PURNEAH.	Tenures, &c.—																								
	(A)	2	...	6	4	...	2	14	...	...	...	1	4	6	3	14	7	1	2	1	...	...	3	14	
	(B)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(C)	...	...	1	...	...	...	1	...	...	...	...	...	1	...	1	1	...	...	...	...	...	...	1	
	Ryots' holdings, &c.—																								
	(A)	54	...	85	62	15	9	225	13	75	58	44	31	3	1	225	32	89	50	22	18	13	1	225	
	(B)	...	...	1	...	...	...	1	...	...	...	...	...	...	1	1	...	...	...	...	...	...	1	1	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Total of District ...	56	...	93	66	15	11	241	13	75	58	45	35	10	5	241	40	90	52	23	18	13	5	241	
	Total of Division ...	139	9	143	94	71	19	475	20	119	91	63	75	14	93	375	63	170	74	36	24	15	93	475	

CUTTACK DIVISION.

Name of District.	Nature of tenure.	Purchaser.							Rent.								Purchase-money.								Remarks.
		Mahajun, trader, or money-lender, &c.	Mahajun and zemindar.	Zemindar, service talookdar, &c.	Cultivator and ryots.	Zemindar and cultivator.	Not stated.	Total.	Under Re. 1.	Above Re. 1 and under Rs. 5.	Above Rs. 5 and under Rs. 10.	Above Rs. 10 and under Rs. 20.	Above Rs. 20 and under Rs. 100.	Above Rs. 100.	Not stated.	Total.	Under 1 year's rent.	Above 1 year or under 5 years.	Above 5 years and under 10 years.	Above 10 years and under 20 years.	Above 20 years and under 50 years.	Above 50 years.	Not stated.	Total.	
Cuttack.	Tenures, &c.—																								
	(A)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(B)	22	8	5	1	11	...	47	19	15	1	1	1	...	10	47	...	3	2	3	10	19	10	47	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Ryots' holdings, &c.—																								
	(A)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(B)	1	1	2	3	...	...	7	3	4	...	...	...	...	...	7	...	...	...	2	2	3	...	7	
	(C)	1	...	...	1	...	...	2	1	...	...	...	...	...	1	2	...	...	...	...	...	1	1	2	
	Total of District ...	24	9	7	5	11	...	56	23	19	1	1	1	...	11	56	...	3	2	5	12	23	11	56	
Pooree.	Tenures, &c.—																								
	(A)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(B)	23	...	3	...	...	...	26	5	7	5	4	2	1	2	26	...	2	3	2	7	10	2	26	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Ryots' holdings, &c.—																								
	(A)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(B)	11	1	1	...	...	2	15	3	2	2	1	...	...	7	15	...	...	...	2	5	1	7	15	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Total of District ...	34	1	4	...	...	2	41	8	9	7	5	2	1	9	41	...	2	3	4	12	11	9	41	
Balasore.	Tenures, &c.—																								
	(A)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(B)	1	...	5	...	...	2	8	5	1	...	...	...	...	2	8	...	...	...	...	1	5	2	8	
	(C)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	Ryots' holdings, &c.—																								
	(A)	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
	(B)	...	3	3	1	...	...	7	2	5	...	...	...	...	...	7	...	...	2	2	1	2	...	7	
	(C)	2	...	...	...	...	...	2	...	2	...	...	...	...	...	2	...	...	...	...	...	2	...	2	
	Total of District ...	3	3	8	1	...	2	17	7	8	...	...	...	...	2	17	...	...	2	2	2	9	2	17	
	Total of Division ...	61	13	19	6	11	4	114	38	36	8	6	3	1	22	114	...	5	7	11	26	43	22	114	

Abstract statement of compulsory sales of holdings under Rs. 1,000 in 1878-79.

NAME OF DISTRICT.	NUMBER OF INTERMEDIATE TENURES AND UNDER-TENURES SOLD.			NUMBER OF RYOTS' HOLDINGS SOLD.			REMARKS.
	(*a*) Permanent; held at rents fixed in perpetuity.	(*b*) Permanent; held at rents liable to variation.	(*c*) Temporary; for terms of years.	(*a*) At rents fixed in perpetuity.	(*b*) Occupancy rights not at fixed rents.	(*c*) Other holdings.	
Backergunge ...	1,993	241[1]	19	43	261	41	[1] The majority of these are in one munsifi, Dekhin Shabazpur. The returns do not always specify the class to which purchasers belong, but all classes seem to be represented, and a good many mahajans appear.
Balassore ...	...	8	...	...	7	2	
Beerbhoom ...	4	...	...	4	258	...	Zemindars, ryots, and mahajans appear as purchasers.
Bhagulpore ...	...	...	...	17[1]	197[2]	16[3]	[1] Generally of small area; purchased chiefly by cultivators and persons in service. [2] Majority of purchasers were money-lenders. [3] All small, and sold for a few rupees.
Burdwan, East ...	100	...	...	252	564	68	The Officiating Judge thinks the classification of tenures and holdings not very reliable. Cultivators are largely represented amongst the purchasers, traders, money-lenders, and servants also appear.
Burdwan, West ...	17	5	3	132	127	47	Tenure-holders, ryots, and mahajans appear indiscriminately amongst the purchasers.
Chittagong ...	766	19	5	475	75	36	The purchasers include zemindars, talukdars, ryots, merchants, pleaders, shop-keepers, mahajans, and mukhtars.
Cuttack ...	...	47[1]	...	...	7	2	[1] Rent liable to be varied on expiration of present settlement. Mahajans formed the majority of the purchasers.
Dacca ...	251	96	1	...	57	24	Mahajans and traders formed the majority of the purchasers.
Dinagepore ...	38	19	3	132	97	23	Some mahajans appear as purchasers, but the return is not specific on this point. Decree-holders are given as purchasers without stating what their employment is. The size and prices of ryots' holdings vary considerably.
Furreedpore ...	247	222	...	175	359	13	Jotedars form the majority of the purchasers. There are also a considerable number of zemindars and talukdars, and a few mahajans.
Gya ...	7	...	54	14	29	...	Vakeels appear as the chief purchasers.
Hooghly ...	26	...	3	268	185	130	All classes—zemindars, ryots, pleaders, shop-keepers, mahajans, artizans—appear amongst the purchasers.
Jessore ...	119	291	...	822	1,668	198	Talukdars and other holders of land appear as the chief purchasers. Some pleaders, mukhtars, mahajans, and servants were also purchasers.
Midnapore ...	309	1	...	144	318	80	The class to which purchasers belong is not always given; but, so far as it is given, all classes—zemindars, talukdars, mahajans—are represented.
Moorshedabad ...	25	...	1	165	283	371	Zemindars, ryots, and mahajans are well represented amongst the purchasers.
Mymensing ...	254	19	...	43	251	96	Purchasers were ryots, talukdars, pleaders and a good many mahajans.
Noakholly ...	745	201	30	111	249	14	Talukdars and zemindars make up a large proportion of the purchasers. There are also some mahajans, pleaders, mukhtars, and persons of other classes.
Nuddea ...	14	...	...	326	6	103	Zemindars, tenure-holders, ryots, some mahajans, and a few pleaders appear amongst the purchasers.
Patna ...	...	...	...	4	94	3	A good many cultivators, some zemindars, some vakeels, and a few mahajans were the purchasers.
Pooree ...	...	25	...	...	15	...	A considerable number of mahajans purchased.
Pubna ...	6	2	32	...	57	49	
Purneah ...	14	...	1	226	1	...	Zemindars, ryots, and mahajans appear as purchasers indiscriminately.
Rajshahye ...	8	8	...	77	67	2	Zemindars, cultivators, pleaders, mohurirs, mukhtars, and some mahajans constitute the purchasers.
Rungpore ...	13	...	...	7	661	135	All classes—tenure-holders, ryots, pleaders, mukhtars servants, mahajans, &c., appear amongst the purchasers.
Sarun ...	...	...	106	...	...	109	The Judge says that his records do not show the different classes of tenures and holdings. Planters, zemindars, a few cultivators, and some mahajans appear as the purchasers.
Shahabad ...	...	...	...	...	570[1]	34	[1] These are chiefly what are locally termed guzashta holdings. The landlords are the purchasers in the majority of cases.
Tipperah ...	253	68	13	27	600	61	The purchasers include zemindars, talukdars, ryots, pleaders, mukhtars, and a large number of mahajans. The areas of the occupancy holdings vary largely, some of them being very small.
Tirhoot ...	...	...	...	98	151	94	The Judge states that no intermediate tenures exist in the district. Indigo-planters, zemindars, some cultivators, and some mahajans appear amongst the purchasers.
24-Pergunnahs ...	118	53	38	600	450	21	All classes, a considerable number of mahajans included, appear amongst the purchasers.

The area, rental, and prices of intermediate tenures and under-tenures, and of ryots' holdings, vary so much that no general deductions can be made in respect of these particulars.

C. D. FIELD.

Note by Mr. Field, *with proposed sections for Merger.*

Merger.

Nemo potest esse dominus et tenens.

Query.—Should merger be allowed in respect of fractional shares? *See* William's Real Property, 12th Ed., p. 414.

When by purchase at a private or public sale, by gift, succession, or will, the proprietor of an estate becomes the owner of a tenure in such estate, such tenure shall, unless such proprietor is shown to have had a contrary intention, be presumed to be merged in the proprietary interest and extinguished by the unity of ownership, subject, however, to the following conditions:—

Kent, Vol. IV, p. 108: Woodfall 281.

(1)—The unity of ownership of the two interests shall be in the same person, in the same right, and at the same time.

Kent, Vol. IV, p. 112.

(2)—The presumption shall not arise in the case of a minor until he becomes of full age, or in the case of a person of unsound mind until he becomes of sound mind.

* Kent, Vol. IV, pp. 110-11.
† 13 B. L. R., 198.

(3)—Such merger shall not operate to the prejudice of any person having a lien* upon such tenure or of any under-tenure-holder or ryot.†

8 and 9 Vic., cap. 106, s. 9.

(4)—Such proprietor shall have the same rights and be subject to the same liabilities which the previous holder of such tenure had or was subject to, in respect of those persons between whom and such tenure-holder the relation of landlord and tenant existed.

The provisions of this section, so far as they are applicable, shall apply *mutatis mutandis* to a tenure-holder acquiring an under-tenure of the first degree, to an under-tenure-holder of the first degree acquiring an under-tenure of second degree, and so on in order, and also to a proprietor, tenure-holder or under-tenure-holder acquiring a holding, held immediately of such proprietor, tenure-holder or under-tenure-holder.

NOTE.

Whether the doctrine of *merger* applies in India is a question which, I believe, has never been authoritatively and directly decided. In the case of *Womash Chandra Gupto* v. *Raj Narain Rai* (10 W. R., 15), Peacock, *C. J.*, said:—"My own impression is that the doctrine of merger does not apply to lands in the mofussil in this country. If it applies, the under-tenure would have merged even if the plaintiff had purchased from the original holder of it; so it would have merged if the plaintiff had purchased, subject to incumbrances created by the under-tenant: but it is clear that in either of the cases above supposed the purchase would not have freed under-tenure from all incumbrances created by the under-tenants. If the under-tenure had been clearly bought subject to incumbrances created out of it, it does not appear to me to be at all clear that the plaintiff would have had any remedy to recover the rents due under any tenure created out of such under-tenure. If the under-tenure itself were merged in the original tenure out of which it was created, the consequence would be that the plaintiff would be bound by a tenure created out of the under-tenure without having any remedy to recover the rent under such tenure. I believe it is the practice in this country for zemindars to purchase and keep on foot *patni talooks* without the necessity of adopting the practice, which is fallowed in England, or purchasing such talooks in the name of a trustee to prevent the merger of them. If the doctrine of merger applies, a zemindar could not purchase and hold a *patni* tenure in *khass* possession."

The 8 and 9 Vic., cap. 106, section 9, was passed to remedy this in England.

According to my experience they are pretty generally purchased *benami*.
C. D. F.

Jackson, *J.*, said:—"I most fully concur in all that has fallen from the Chief Justice in respect of the doctrine of merger. I am not aware of any solid foundation for the opinion that that doctrine is part of our mofussil law." The case was finally decided on grounds other than those of merger.

"The intention is considered in merger in law, but it is not the governing principle of the rule as it is in equity; and the rule sometimes takes place without regard to the intention." Kent Com. IV, p. 111; and *see* William's Real Property, 12th Ed., pp. 413-14.

The merger here spoken of appears to be the merger of the English common law, which being a legal incident of estates formerly occurred irrespectively of the intention of the person in whom the union of the two interests occurred, and irrespectively of the trusts on which these interests were held. Equity, on the other hand, allowed merger only where it promoted the intention of the party and favoured the purposes of justice. "The rule at law," says Mr. Chancellor Kent, "is inflexible; but in equity it depends upon circumstances, and is governed by the intention, either expressed or implied (if it be a just and fair intention) of the person in whom the estates unite, and the purposes of justice, whether the equitable estate shall merge or be kept in existence." Recently the Supreme Court Judicature Act has provided in England that there shall not be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity (36 and 37 Vic., cap. 66, s. 25, subs. 4.)

In the case of *Rajah Kissen Dutt Ram* v. *Rajah Mumtaz Ali Khan* recently decided by the Privy Council (L. R., 6, I. A., 145) the mortgagee of a talook, while in possession, acquired by purchase certain *birt* tenures situate within the talook. The mortgagor redeemed, and the question arose whether the mortgagee could be allowed to hold these *birt* tenures after the redemption. The case was argued on two grounds. *First*, it was contended that these *birt* tenures had merged in the interest of the mortgagee in possession, and must therefore pass to the mortgagor when he redeemed and obtained back that interest. *Secondly*, it was urged that these purchases must, according to a well known principle of law, be taken to have been made for the benefit of the mortgagor.

As to the *second* point, their Lordships of the Privy Council said that they were not "prepared to affirm the broad proposition that every purchase by a mortgagee of a sub-tenure existing at the date of the mortgage must be taken to have been made for the benefit of the mortgagor so as to enhance the value of the mortgaged property, and make the whole, including the sub-tenure, subject to the right of redemption on equitable terms." Without affirming this general proposition, their Lordships, however, allowed it considerable weight in connection with the peculiar facts of the case before them; but the decision did not proceed upon this ground only. It was based on both the grounds above-mentioned.

In one passage of their judgment their Lordships said :—" It may well be that when the estate mortgaged is a *zemindari* in Lower Bengal, out of which a *patni* tenure has been granted or one within the ambit of which there is an ancient *mukurari-istemari* tenure, a mortgagee of the *zemindari*, though in possession, might purchase with his own funds and keep alive for his own benefit that *patni* or *mukurari*. In such cases the mortgagee can hardly be said to have derived from his mortgagor any peculiar means or facilities for making the purchase which would not be possessed by a stranger, and may therefore be held entitled equally with a stranger to make it for his own benefit. In such cases also the *patni*, if the *patnidar* failed to fulfil his obligations, would not be resumable by the *zemindar*, and the *zemindari* would always have been held subject to the *mukurari*."

Dealing with the question of merger their Lordships say in a subsequent passage of the judgment :—" Again what followed on the purchases?" (of the *birt* tenures, that is). " Had they been made by or on behalf of a *talookdar* holding under an absolute as distinguished from a mortgaged title, the tenures would, as a matter of course, have merged in the *talook*. The mortgagee seems, until the institution of these proceedings, to have treated them as so merged. He is not shown to have taken any steps to keep them alive as distinct sub-tenures for his own benefit On the contrary, at the time of the first summary settlement, after annexation, he never sought to engage for these villages as *birtia*, and on the summary settlement after Lord Canning's proclamation, he did in fact engage for them as *talookdar*, and as parcel of the *talook*. His conduct is not surprising. He probably did not contemplate redemption (in this very suit he disputed the right to redeem), and he therefore not unnaturally dealt with the *birts* as merged in the *talook*, thereby enhancing the value of the mortgaged estate, of which he expected to become absolute proprietor. Again, had the mortgagor redeemed before these purchases, he would have resumed his position as *talookdar*, with the means of dealing on favourable terms with *birtias*, who have proved to have been willing to part with their interests for very considerable sums. The mortgagee taking advantage of his position of talookdar *de facto* has so acquired the *birts* and allowed them to merge in the talook."

N. B.—This supposes the doctrine of merger to apply in India.

It is clear that the Lords of the Privy Council here considered the question of *intention* to be most material, and they inferred from the conduct of the mortgagee an intention that the *birt* tenures should merge.

In the above draft the intention is made the test of merger, but the necessity of clearly indicating this intention is imposed by laying upon the person who denies the merger the burden of proving that there was no intention to merge the lesser interest in the greater. As in the majority of cases the person denying the merger will be the person in whom the two interests united, it is not unreasonable to compel him to prove what is peculiarly within his own knowledge.

The want of a distinct rule upon the subject has been felt by all persons who have had any considerable experience of judicial work. The following instance, which occurred within my own experience, is a fair example of the mischief which it is proposed to remedy :—A, *patnidar* created a *darpatni* of his *patni* tenure. Some years afterwards this *darpatni* was sold in execution and purchased by A. Twenty years afterwards A defaulted in the payment of his *patni* rent and the *patni* was brought to sale by the zemindar under Regulation VIII of 1819 and purchased by B. The moment B attempted to collect rents from the ryots, A came forward as *darpatnidar* and prohibited the ryots from paying rent to any one but himself. B was in consequence involved in litigation and put to considerable expense before he succeeded in obtaining effectual possession of the *patni*, which he had purchased in absolute ignorance of a *darpatni*, which had indeed existed twenty years before, but had not during these twenty years been heard of or entered in the accounts.

C. D. FIELD.

Note by MR. FIELD *on the law relating to land used for Buildings, &c., with proposed sections.*

IN the case of *Koonj Behari Patuck* v. *Shiva Baluk Singh* (1, Agra F. B., 119) the tenant of a holding containing over three beegahs of land had, without his landlord's consent, dug a well in his holding. There was no written lease. The landlord sought to eject him from the entire holding on the ground that the tenant's act was an exercise of proprietary right, which worked a forfeiture of the lease. Section 128 of the *Directions for Settlement Officers* declared cultivators incompetent to perform any act, which is considered to indicate proprietary right such as digging a well, planting a garden, or locating a labourer; but a later circular order of the

Construction of a well on his holding held by the High Court, North-Western Provinces, to be a ground for ejecting a ryot having a right of occupancy.

Board of Revenue recognized the expediency of permitting cultivators to sink wells, on the understanding that the tenure of the well shall be in every respect the same as the tenure of the holding in which it is constructed. The suit was brought under clause 5, section 23, Act X of 1859. Eviction was decreed by the court of first instance. This decree was reversed by the first appellate court, but restored by the Sadr Court. A review was then applied for and granted, and the case came before a Full Bench of the High Court then just established. This bench consisted of Morgan, *C.J.*, and Roberts, Pearson, Turner, and Spankie, *JJ.*, who unanimously affirmed the decree for ejectment.

With reference to the argument that the digging a well for the purpose of irrigation was an *improvement*, as tending to increase the productive powers of the soil, they observed that the useful or beneficial nature of an act is not a justification of it, if it be a breach of contract. They said in a later portion of their judgment :—"We are satisfied that in these provinces the power of a ryot, even having a right of occupancy in his holding, is limited by other conditions than the single condition of paying the proper rent, and that there are certain acts, such as the construction of a well and the planting of trees, which he is not competent to perform without his landlord's consent. There may, of course, be local usages forming exceptions to the general law, but we see no reason to doubt that the law is such as it is represented to us to be."

In the case of *Jewa Ram* v. *Futteh Singh* (1, Agra, F. B., 125) the same five Judges unanimously applied the same principle to a ryot who had planted trees on a portion of his holding without his landlord's consent, and a decree was made for ejectment from the entire holding from which the rent issued. These two cases were decided in 1867.

In 1871 two cases came before the North-Western Provinces High Court, in which the same question was fully re-considered (see *Sheo Churn, &c.*, v. *Bussunt Singh*, and *Ram Jathun Singh, &c.*, v. *Munshi Mehdi*, 3, Allahabad Reports, 282). These appeals were taken up together. In the *first* case the original prayer of the plaint was that the defendent might be restrained from constructing a *pucca* or masonry well on the zemindar's waste land. By an amendment of the plaint it was stated that the well had since the filing of the plaint been completed, and it was asked that the defendant might be directed to *fill it up*. The plaint averred that the defendant, having no proprietary right, by constructing the well did an act detrimental to the plaintiff's title and to the future cultivation of the land. The defence denied any intention of invading the plaintiff's proprietary right, and alleged that the defendant was merely improving a well which his father had constructed many years previously, and which had been ever since used for the irrigation of the fields of family holding. There was no suggestion that a ryot could construct a well without the zemindar's consent, and the case was remanded by the High Court to try whether the defendant had a prescriptive right of irrigating his lands from the old well. It may be remarked that in this case it was not sought to *eject* the ryot.

Suit to compel a ryot to fill up a well made without the zemindar's consent.

In the *second* case it was sought to eject the ryot from his entire holding, because he had dug a *kutcha* well upon part of it. The defence relied upon a local custom, under which it was contended that ryots could construct *kutcha* wells without the zemindar's consent. The plaint in this case did not allege that the act of making the well was done with the intention of repudiating or disclaiming the landlord's title, nor was any general right in the tenant to make wells without his ladlord's consent averred by the defendant. Under such circumstances the Judges of the Division Bench (Morgan, *C.J.*, and Ross, *J.*) thought that the plaintiff's remedy should be by a decree either (1) for the restoration of the land to its former condition, or (2) for damages, or (3) for ejectment from the portion on which the well was dug. Owing, however to some misapprehension which appeared to have arisen as to the exact scope and effect of the decision in the case of *Koonj Behari Patuk* v. *Shiva Baluk Singh*, they decided to refer the matter to a Full Bench. In their referring order they pointed out that in that case the view presented was that *the making a well was a distinct assertion of proprietary right inconsistent with the title of the landlord ;* that the effect of the construction of wells under circumstances indicating that there was no intention to challenge proprietary right, but only to do what was requisite for due cultivation, was not then contemplated, nor was any distinction taken between *kutcha* and *pucca* wells ; that the question in the previous case had been asked and answered in general terms ; that if the so-called well were a mere shallow excavation, annually made at a trifling cost for the cultivation of the year, it would be worthless as evidence of an indication of proprietary rather than occupancy right ; while a construction of a more costly and enduring character, unless made with the landowner's consent, or under circumstances such as those of the cases before the Court, might be regarded as an assertion of a right in the soil extending beyond the mere right to occupy and cultivate it, and therefore trenching on the rights of the landowners ; that such an act, whatever its consequences, when done in assertion of a larger right than the ryot had in the hand, should not (in the opinion of the Judges) be regarded as of itself an act of forfeiture when done by a cultivator *in furtherance merely of the work of cultivation*, if this could be satisfactorily shown.

Remedies other than ejectment from the entire holding proposed.

The draft proposes to eject only from the portion of which the use has been changed without the landlord's permission.

It will be observed that in both cases any intention of infringing the proprietary right was disclaimed : and the well was alleged to have been made merely for purposes of irrigating the cultivated land.

The cases then came before a Full Bench consisting of three (Morgan, *C.J.* and Turner and Spankie, *J.J.*) of the five Judges who had decided *Koonj Behri Patuck's* case. In their judgment they said that the question submitted to the Full Bench in that case was—

"Whether, having regard to the circumstances that the act of digging a well for the purpose of irrigation, as tending to increase the powers of the land, is subservient to the end contemplated by the lease of the land for cultivation, such an act could be justly viewed as a breach of the contract between landlord and tenant, and render the latter liable to ejectment from the holding in cases in which no special agreement had been made between the parties." That in answering this question the court had intimated that the useful or beneficial nature of an act was not a justification of it, if it were a breach of contract; that a condition not expressively made between the parties to a contract may be attached thereto by custom; that section 6 of Act X of 1859 is not to be held to import that a ryot with right of occupancy is entitled to use and deal with the land as he pleases, so long as he pays his rent; that subject to local usages forming exceptions to the general law, the power of such a ryot is limited by other conditions than a single condition of paying rent; that there were certain acts, such as the making of a well, as the planting of trees, which he was not competent to perform without the zemindar's consent; that it had not been contended or proved that, according to the law of the country, there was any other penalty than forfeiture for a breach of contract committed by doing any of these acts without the zemindar's consent, and that the judgment of the Court attaching this penalty was guided by what it understood to be the recognised custom of the country, and sanctioned by the practice of the Sadr Court.

The unanimous judgment of the three Judges then proceeded to announce the conclusions at which, after re-consideration and the fullest possible investigation, they had arrived as to the custom of the country in respect of the right of tenants to construct wells. These were substantially (1) that ryots with rights of occupancy may not construct *pucca* wells without the consent of the zemindars, and that this rule applies generally, though not universally, in the North-Western Provinces; (2) that for *kutcha* wells of a more or less durable nature the zemindar's consent is in some parts of the country necessary, in other parts not necessary; (3) that no consent is necessary for *kutcha* wells, constructed by simply excavating a few feet of earth, and which require annual renewal.

The judgment then proceeds:—"It remains to be considered whether a violation of the rule by a ryot ensures to the forfeiture of his holding. We stated in our judgment in the case of *Koonj Behari Patuck* that it was not contended nor proved that any other penalty than the forfeiture of his holding attached to a ryot for breach of the implied condition of his contract by the construction of a well without consent. We expressed this opinion in accordance with the view which we were informed was held by the Sadr Court. On further consideration we see reason to modify that opinion. Prior to the passing of Act X of 1859 questions relating to the ouster of tenants were triable by the revenue courts in summary suits; and for the trial of these suits rules and directions were issued by the Sadr Board of Revenue. Now, although on referring to those directions we find that in 1846 the Sadr Board directed that the Collector should not listen to a suit of ouster, where the tenant had been ousted for infringing his lease by planting trees, &c. (Tucker's Notebook, 540); yet in 1856 the Sadr Board greatly modified this direction. In its letter of the 26th September 1856 there occurs the following passage:—

Query.—Could three Judges modify the deliberate and unanimous opinion of five?

"[The tenant] may or may not be restored according to the discretion of the Court even within the term of the lease, if he has violated or attempted to violate established usage or the conditions of the lease, as *by building on the land*, planting trees, &c. It will be competent to the Collector either to eject the cultivator for such acts, or to restrain him from their performance as the condition of his renewed possession. But, ordinarily, he will not be restored to possession if he be found to have violated or not fulfilled any material stipulation of the lease or tenure."

Query.—Was it competent to the Board to legislate in this manner by way of giving directions for the trial of suits? The passage is interesting as showing that, according to ancient usage, ryots were liable to ejectment for other causes than non-payment of rent. Mr. Shore (afterwards Lord Teignmouth) and Mr. Harrington mention it as prescriptive law, well understood, that a *khudkasht* ryot could not change the species of cultivation without a forfeiture of the right of occupancy, which (it is added) was, however, rarely insisted on.—(*Extracts from Harrington's Analysis*, p. 272.)

Thus, before Act X of 1859, forfeiture was although the ordinary yet not the invariable penalty, and the Judges were "informed that the right to claim forfeiture for the construction of a well without consent, where such a right exists, is not one on which landlords frequently insist, and that, when exercised, it is often exercised arbitrarily."

Adverting to the equitable principle of granting relief against forfeiture, the judgment thus concludes:—"We therefore hold that forfeiture is not to be deemed the invariable penalty for breach of contract occasioned by the construction of a well. When such a forfeiture is claimed, and the right to claim it is proved, the court should consider whether an adequate remedy cannot be secured to the landlord without depriving the tenant of his whole interest in the holding; and if it finds that such a remedy can be given, and that the tenant has not deliberately invaded his landlord's rights, but admitting his own position as tenant has acted in what he believed to be the exercise of a right, or in the honest belief that his act would not meet with objection on the part of the landlord, it should refuse to oust the tenant, and leave the landlord to seek a remedy which would be more proportioned to the injury he has sustained, and amply relieve him from its effects."

N.B.—The draft proposes to retain ejectment only when the tenant obstinately persists after notice.

North-Western Provinces Rent Act (XVIII of 1873), section 34.

Section 34 of the North-Western Provinces Rent Act (XVIII of 1873) now enacts as follows:—No ejectment of a tenant or forfeiture of a lease shall be decreed on account of any act or omission of the tenant—(1) which is not detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let, or (2) which by law, custom, or special agreement does not involve the forfeiture of the lease."

Suit by zemindar for damages for injury to land by brick-making.

Turning now to the decisions of our own High Court in the case of *Kadambini Debi* v. *Nobin Chandra Adukh, &c.* (2, W. R., 157), a zemindar sued certain ryots for *damages* on account of injury done to the land by excavating it for brick-making. The Court (Steer and E. Jackson, *JJ.*) said :—"No doubt any ryot who destroys his land by making holes in it for providing earth for bricks, or allows another to do so, renders himself liable for damages to his landlord for the permanent damage done to his property by that means. The questions, therefore, to be tried are, whether the land, taking its former condition into consideration, has been permanently destroyed or injured by the defendants . . . . and what is the measure of damages." In *Anund Kumar Mukherji* v. *Bissonath Bannerji, &c.* (17, W. R., 416) a ryot had similarly used a portion of his land for brick-making, and the *patnidar*, his landlord, sued for *damages* on account of the land being permanently injured, or for an order compelling the ryot to restore the land to its former condition. The ryot set up a *mukarrari* title. The High Court (Kemp and Glover, *JJ.*) held this immaterial. They observe that if the landlord desired to enhance on the ground that the value of the produce or the productive powers of the land had increased, he would find it difficult to make out his case in consequence of the soil having been excavated and taken away for making bricks, that, so long as the ryot retained the land and paid his rent, it might be that the landlord would suffer no damage, but it might happen that the ryot would cease paying rent or relinquish his tenure, and then how could it be said that no damage had occurred to the plaintiff in consequence of the excavation." "It appears to us," they add, "that very considerable damage has already been done, and that no tenant taking land without some specific agreement on the subject is entitled to *change the nature of that land from what it was when he got it, or to make any permanent alteration in the state of the landlord's property.* If a person wishes to lease lands for the purpose of making bricks, that should be the subject of as special agreement between the parties in the same way as when parties take lands for *building purposes.*

Ryot may not change the use of the land.

Suit by zemindar to have a tank dug by a ryot filled up.

In *Tarini Churn Bose* v. *Debnarain Mistri* (8, B. L. R. Ap., 69) a zemindar sued A for damage done by digging a tank on one out of three bighas of land held by ryot B. A alleged that B had transferred the jote to him. The question of the transfer was not tried. The lower appellate court held that the tenure had existed since the time of the Permanent Settlement; that there was a custom that persons holding such tenures had a right to dig tanks, and that this tank was an improvement. On appeal to the High Court it was on the one side contended that to convert culturable land into a tank without the zemindar's consent was not an improvement, and that ryots had no right to occupy lands for any other than the purpose for which they were given; while, on the other side, it was argued that a ryot has a right to enjoy possession as he likes while his tenure lasts, and the zemindar cannot oust him, but when his tenure is at an end the zemindar may sue him for any damage done to the property. The High Court (Macpherson and Ainslie, *JJ.*) set aside the decree of the lower appellate court and restored the Munsif's decree, which directed the tank to be filled up, holding that the custom had not been proved, that the fact of the tank being an improvement could not be assumed and had not been proved, and that, although the zemindar was not entitled to the immediate possession of the land, he retained such an interest in it as entitled him to ask that the injury done to the property might at once be removed. The case of *Mohindro Chandra Sirkar* v. *Monirudin Biswas, &c.* (11, B. L. R., Ap., 40) was similar, except that there was a lease containing a stipulation that the lessee should not excavate a tank on the land. In remanding the case the High Court said that the civil court had full jurisdiction to make the defendant level the land, or, in default thereof, to pay by way of damages such sum as would restore the land to its former condition. It does not appear from the reports of these cases whether the zemindar had sought to eject the ryot : certainly no such question was raised or decided.

In *Chandra Kumar Rai* v. *Kadermani Dassi, &c.* (7, W. R., 247) a custom was proved that a *khudkasht ryot*, who had built a pucca house on the land and acquired a right of occupancy under section 6 of Act X of 1859, should have the right to transfer. See also *Nichan Sahoo* v. *Jhooree Sahoo* (S. D. A. Decis. for Bengal, 1845, p. 243).

The maximum *quicquid plantatur solo solo cedit* does not apply in India.

In the case of *Thakur Chundar Paramanick, &c.* (B. L. R. F. B., 595) A, the widow of B, sold a portion of B's estate to C, who sold to D. After A's death, E, the heir of B, successfully sued to set aside this alienation as having been made without lawful necessity. The question then arose whether E was entitled to certain buildings erected by D during A's lifetime, and this question was referred to a full bench of five Judges (Peacock, *C.J.*, Bayley, Norman, Pundit, and Campbell, *JJ.*). Peacock, *C. J.*, in delivering the unanimous opinion of the Full Bench said :—"We have not been able to find in the laws or customs of this country any traces of the existence of an absolute rule of law that whatever is affixed to, or built on, the soil, becomes a part of it, and is subjected to the same rights of property as the soil itself . . . In the case of *Khoderam Surma* v. *Trilachan* (Select Reports, 35) we find it laid down that 'if a member of a joint Hindu family build a brick house on ancestral land with separate funds of his own, such house would not be a property in which shares might be claimed by his coparceners : coparceners in the land would only have a claim on him for other similar land equal to their respective shares.' That the maxim *quicquid plantatur solo solo cedit* does not apply in such cases was rcognized by the late Sadr Court in the case of *Jankee Singh* v. *Bukhooree Singh* (S. D. A. Rep. for 1856, p. 761). That was a suit for the demolition of buildings erected on joint property by a member of a joint Hindu family without the consent of his co-sharers. *W. G. Nicose Pogose* v. *Niyamatula Ostagor* (S. D. A. Rep. for 1858, p. 1517): *Sadr Diwani Adalut,* North-Western Provinces, 25th November 1863, p. 418, and *Kalipersad Dutt* v. *Gauripersad Dutt* (5, W. R. 108) are similar cases. They show at least that the English rule above alluded to does not prevail in this country . . . According to the civil law, if a person building on the land of another used his own materials, not knowing that the land was not his own, when the building was destroyed he could reclaim the materials, or if he was in possession of the building, could refuse to deliver it to the owner, unless he was indemnified for his expenses at least so far as they had been incurred profitably to the owner of the soil (see Sandars' Justinian, Book 2, tit. 1, para. 30). We think it clear that, according to the usages and customs of the country, buildings and other improvements made on land do not by the mere accident of their attachment to the soil become the property of the owner of the soil, and we think it should be laid down as a general rule that, if he who makes the improvement is not a mere trespasser, but is in possession under any *bonâ fide* title or claim of title, he is entitled either to remove the materials, restoring the land to the state in which it was before the improvement was made, or to obtain compensation for the value of the building if it is allowed to remain for the benefit of the owner of the soil—the option of taking the building or allowing the removal of the material remaining with the owner of the land in those cases in which the building is not taken down by the builder during the continuance of any estate he may possess." In this case, it will be observed, there was no relation of landlord and tenant existing between the parties.

In *Sibdas Bandapadhya* v. *Bamandas Mukhapadhya* (VIII B. L. R., 237; S. C. 15 W. R., 360) the assignee of the purchaser of a tenure sold under the provisions of Act VIII (B. C.) of 1865 sued the assignee of the purchasers of a house and the site thereof, such site forming a portion of the tenure, and the house and the site having been separately sold in execution of a decree of the civil court. The principle of the above Full Bench decision was held to apply. Norman, *J.* (Loch *J.*, concurring) thought that the option to insist on the destruction of a brick-built house and the removal of the materials is one which should and must be exercised promptly or not at all. The original purchaser, the plaintiff's assignor did not exercise the option, he acquiesced in the continuance of the building on the ground, and sought to make use of his supposed legal right for the purpose of extorting an excessive price or rent for the use of the site of the house. This, it was held, he could not do, and the court, without expressing a final opinion whether the original purchaser, immediately on acquiring the tenure could have called on the purchasers at the civil court sale to remove the materials of the house and give actual possession of the land, decided that such a right, if it ever existed, had been lost, and that the only right which remained to the plaintiff was that of receiving a fair rent for the land.

Rights of landlord and tenant when tenant builds on land.

The judgment in this case contains the following passage:—"Let us now see what are the respective rights of landlord and tenant where buildings are erected by a tenant during the tenancy. I think there is no doubt but that a zemindar might object to the erection of brick houses on land let for the purposes of cultivation, and if he resorted to a court of justice might obtain an order restraining his ryot from doing anything which would substantially alter the character of the tenure. In the North-Western Provinces it has been held that a tenant, having a right of occupancy, planting trees on his holding without his landlord's permission, or even digging a *kutcha* well, commits such a breach of the contract of tenancy as warrants the landlord in suing to eject him. But if the landlord, instead of objecting to the erection of a brick house on the holding, were to remain passive and allow a house to be built, knowing as he necessarily would in a case such as that now before us that the security for the rent would be enormously increased by the erection of the building, it appears to me that he could not afterwards be heard to say that the tenant had done any wrong in erecting the house on the tenure. If in such a case the tenancy should be determined, the position of the parties would appear to be this: The landlord would be the owner of the soil, the tenant of the house. I think it would be contrary to the principles of equity and good conscience to allow the landlord to insist on the needless destruction of a valuable building, or to allow him to claim to remove it, without making to the owner full compensation for its value. I may refer on this point to the Roman Civil Law Institutes, book 2, tit. 1, section 30, and Digest 7, book 41, chapter 1, section 7, § 12. By that law, if the person who built was honestly in possession of the land, and the owner of the soil claim the building, but refused to pay the price of the materials and the wages of the workmen, the claim of the owner might be rejected."

Effect of acquiescence.

In *Beni Madhub Bannerjee* v. *Jal Krishna Mukherji*, &c. (7, B. L. R., 153: S. C. 12, W. R. 495) the zemindar sued to eject three persons as trespassers. They set up a purchase from ryots who had *maurasi* and *mukarrari* interests, and this purchase was proved. In the *kabuliyats* of their vendors, executed some *forty* years previously, there was a stipulation that *pukka* houses should not be ejected on the land, which was, however, let for building huts and residing thereon. *Pukka* houses were without objection erected on the land many years (apparently some thirty-five) before the suit was brought. Glover, *J.*, was for ejecting the defendants, but Kemp, *J.*, whose opinion as that of the senior Judge prevailed, took a different view. "Looking to the purpose for which the land was originally leased," said he, "to the fact of the long and uninterrupted occupation of the defendants, their vendors, and the ancestors of those vendors, and to the conduct of the plaintiff in permitting the defendants to erect a *pukka* dwelling-house on plot No. 1, I do not think it equitable to give the plaintiff a decree to eject the defendants and to take direct possession of the land, and that, too, without any compensation whatever to the tenants, who are to be summarily turned out of house and home. On appeal Mr. Justice Kemp's judgment was affirmed by a Bench of three Judges (Peacock, *C. J.*, L. S. Jackson and Macpherson, *J. J.*) Peacock, *C. J.*, saying :—" Mr. Justice Kemp . . . thought that in equity the plaintiff was not entitled to turn the defendants out of the lands, because he stood by and saw them erecting *pukka* buildings on the land without any objection whatever. If he allowed the defendants to erect *pukka* buildings upon the land without objecting, it appears to me that he was bound in the same way in equity as if he had granted them a *pottah* with the privilege of building *pukka* houses on the land." This case was quoted and followed in *Brajanath Kundu Chaudhri, &c.*, v. *Stewart* 8, B. L. R. Ap., page 51 (per Paul, *J.*) : and in *Durga Persad Misser* v. *Brindaban Sukul*, 7, B. L. R. 159 (per Ainslie, *J.*)

Reference may also be made to the case of *Mussamut Rani Rama, &c.*, v. *Sheikh Jan Mahomed* (3. B. L. R. A. C. 18). Here it was said :—" If the plaintiff has a legal title to the land, and has stood by without asserting his rights, allowing Imdad Ali to sell to the defendant, standing by while Srinandan has built on and planted the land in the belief which the plaintiff has encouraged, or at least permitted him to entertain, that he had a good title, it will become a question whether the utmost the plaintiff is entitled to is not to get a reasonable rent from him—see the judgment of Mr. Justice Trevor in *Hurro Chundro Mukherji* v. *Hulodhur Mukherji* (W. R. Jan.—July 1864, page 166). The decision in that case appears to be in accordance with sound principles of equity. There is a case cited in Story's Equity Jurisprudence (vol. II, § 1549), *The Somersetshire Canal Company* v. *Harcourt* (24, Beav. 571) decided on a similar ground : and see also *The Rochdale Canal Company* v. *King*, 16, Beav. 630. The rule of equity is thus stated by Lord Eldon in *Dann* v. *Spurrier* (7, Ves. 131) :—" The court will not permit a man knowingly, though passively, to encourage another to lay out money under an erroneous opinion of title, and the circumstance of looking on is, in many cases, as strong as using terms of encouragement. When a man builds a house on land, supposing it to be his own or believing he has a good title, and the real owner, perceiving his mistake, abstains from setting him right, and leaves him to persevere in his error, a court of equity will not allow the real owner to assert his legal right against the other without at least making him full compensation for the money he has expended." See also *Ramsden* v. *Dyson*, L. R. 1, H. L. 129.

In the case of *Peter Nicholl, &c.*, v. *Tarini Charan Bose* (23 W. R. 298), while it was fully recognized that the landlord had the right to protect the land from damage or injury, and to prevent any use of it, by which its permanent usefulness might be impaired or endangered, a suit for an injunction to restrain brick-making and for damages was dismissed, as the landlord had for five and twenty years acquiesced in the land being used for making bricks.

Effect of long occupation of land with buildings.

In *Durga Persad Misser, &c.*, v. *Brindaban Sukul* (7 B. L. R. 159), A had permitted B to erect a thatched dwelling-house with mud walls on a piece of land belonging to A. B so occupied the land for more than forty years, whereupon the house and site were sold in execution of a decree against B, and were purchased by C. It was held that B had become possessed of an assignable interest, and that A was not entitled to dispossess C. A case somewhat similar is that of *Bukshoo* v. *Ilahi Buksh*, 5 Decis. N. W. P. 365.

Compare this case with that of *Nur-put Singh* v. *Natkoo Ram*, 3 Decis. N. W. P. 282.

In the case of *Addatiya Charan Dey* v. *Peter Das* (17, W. R. 384; S. C. 13 B. L. R. 417 *note*) the plaintiff, the transferee of the landlord's rights, sued to eject a person who had occupied the land upon which his huts were standing for some thirty years, and ten or twelve years before the institution of the suit had put a *kutcha-pukka* wall round it. A decree for ejectment was passed, the High Court (L. S. Jackson, *J.*) observing :—" It seems to be quite clear that the *permissive* occupation of land under such circumstances as the defendant has held this land will not give him a right to retain possession of it when the landlord desires to put an end to the tenancy." The question of compensation was here raised, but there was no evidence on the point. Somewhat similar to this case was that of *Mohur Ali Khan Pathan* v. *Ran Rutun Sen* (21, W. R. 400), in which the defendant was holding " permissively and without any right" (for how long does not appear) a piece of land of very small area and occupied by a shop. The High Court (Kemp and Glover, *J. J.*) confirmed the decree for ejectment passed by the lower subordinate court. The facts of this case must have differed from those of the case at 7, W. R. 152, in which the opinion of Kemp, *J.*, prevailed. In this latter case there had been a grant of the land for purposes of *residence* many years previously.

In the case of *Prosono Kumari Devi, &c.*, v. *Sheikh Ruttun Bepari, &c.* (I. L. R. 3 Calc. 696) the established facts were that the defendants, their father and grandfather, had been occupying the land for fifty or sixty years, during which time it had been used as a homestead and occupied by a house and fruit trees. There was no evidence as to the origin of the tenancy, or as to who had built the house or planted the fruit trees. Rent had been regularly paid. The landlord, requiring the land for the erection of a cutchery, served the defendants with notice to quit, and then sued to eject them. It was held that he was entitled to do so. The case of *Shib Das Bandapadhya* v. *Bama Das Mukhupadhya, and Addaitea Churan Dey* v. *Peter Das*, were referred to. The High Court say in their judgment :—" There is no law, of which we are aware, in this country, which converts a holding at will, or from year to year, or for a term of years, into a permanent tenure, merely because the tenant, without any arrangement with his landlord, chooses to build a dwelling-house upon the land demised. Such a law, if it existed, would in a large number of cases lead to great injustice and inconvenience, and would often leave landowners entirely at the mercy of their ryots. Small *kutcha* dwellings in this country may be erected in a short time and at a very trifling expense; and if a landlord, as soon as he or his agent discovers such a dwelling to have been erected, were obliged, on the one hand, to turn the tenant out, or make him pull down his house; or, on the other hand, as the only alternative, to allow the tenant's permissive holding to become a permanent tenure, the consequences would often be disastrous to tenants or very unjust to landlords. The truth is that the terms of a holding, as between landlord and tenant, must always be matter of contract, either expressed or implied. If they enter into an express agreement of tenancy, either written or verbal, such agreement generally defines the terms of the holding. If, on the other hand, a tenant is let into possession without any express agreement, and pays rent, he becomes a tenant-at-will, or from year to year; or, in other words, holds by the landlord's permission upon what may be the usual terms of such a holding by the general law or by local custom; and in such a case he is, of course, liable to be ejected by a reasonable notice to quit. Occasionally there are local customs by which special terms and incidents are engrafted upon the contract of tenancy; but the existence of the custom in such cases must be a matter of proof, and no judge has a right to act upon such customs unless their existence is duly established. In this case no such custom is even suggested, and as there was no express agreement of tenancy, and no evidence of its origin, the defendants must be considered as holding from year to year and liable to be ejected by a proper notice to quit . . . . "

" . . . If a tenant wishes to build dwelling-houses upon his land he should take care to make a proper arrangement accordingly with his landlord. He has no right to hire his land for one purpose upon an ordinary permissive holding from year to year, or at will, and then, by using it for another purpose, to convert it, at his own option, and without consulting his landlord's wishes, into a permanent tenure. Such a law, if it were in force, would be manifestly unjust to the landlord, and would lead to much litigation and inconvenience . . . . . . "

" In some instances, no doubt, either from expressions used in the contract of tenancy, or from the fact of land having been let by a landlord expressly for the purpose of the tenant building *pukka* houses upon it, such circumstances, coupled with a long and uninterrupted possession by the original grantee and his descendants, have been held to raise a presumption that the tenure was intended to be permanent; but such cases often create doubt and difficulty, and it is always far safer for a tenant, if he means to build, to have the terms of his tenure clearly defined by a written instrument."

In this no question of compensation appears to have been raised, and the houses were apparently ordinary huts and not brick buildings. There was no evidence that the holding was of a permanent character, or for any defined period.

It may be observed, in conclusion, that leases of land for building purposes have in several instances been favoured by the Legislature. When proprietors were at the time of the Permanent Settlement prohibited from granting leases for a longer period than ten years, a special exception was made in favour of leases of ground "for the erection of dwelling-houses, or buildings for carrying on manufactures, or for gardens or other purposes, or for offices for such houses or buildings"—see Reg. XLIV of 1793, s. 8. Protection against purchasers at a sale for arrears of revenue has also been afforded in the sale laws to "*boná fide* leases at fair rents, temporary or perpetual, for the erection of dwelling-houses or manufactories, or for mines, gardens, tanks, canals, places of worship, burying-grounds, clearing of jungle, or the like beneficial purposes."—see Act XII of 1841, ss. 27, 28, Act I of 1845, ss. 26, 27, and Act XI of 1859, ss. 37, 52.

The 24th December 1879. C. D. FIELD.

Proposed sections dealing with the use of land for building purposes.

WHEN land used or let to be used for agriculture, horticulture, pasture, or any other similar purpose is held by a ryot having a right of occupancy therein, such ryot shall not, without the permission of the landlord of such land, use any portion thereof for building or any other purpose different from that for which it was used or let to be used as aforesaid: provided that a ryot may without such permission erect upon such land a brick-built or other dwelling-house suitable for the use and occupation of himself and his family, together with such out-houses and offices as may be necessary thereto.

If any such ryot, without the permission of the landlord thereof, use any such land for building or any other different purpose as aforesaid, such landlord may serve such ryot through the court with a notice of objection to such change of the use of the land.

If such ryot, after the receipt of such notice, continue, notwithstanding, to use such land for building or other different purpose as aforesaid, he shall be liable to be ejected by the court at the suit of the landlord from the land so used; and if the notice were served upon him within a reasonable time after he began to use the land for building or different purpose as aforesaid, he shall not be entitled to compensation in respect of any buildings or works erected or executed upon such land, and he shall be liable by way of damages for such sum as may be necessary to restore the land to its former state.

If no reasonable notice, but no evidence that landlord was aware, shall ryot ejected within the two years be entitled to compensation, and not liable for damages?

If for the space of two years after the use of the land has been so changed, such landlord omit to serve such ryot with notice of objection as aforesaid, and further omit to sue to eject such ryot from such land, or if the landlord being aware of such changed use without objection allow such ryot to expend money for such building or other purpose, such landlord shall be stopped from afterwards objecting to such changed use, and such land shall be deemed to have been let for building or such other purpose to which its use has been altered.

When land used or let to be used for building or any purpose other than agriculture, horticulture, pasture, or the like has been in the immediate possession of a tenant whether under or without a lease, for the full period of twelve years after this Act has come into operation, such tenant shall, in the absence of any contract to the contrary, acquire a right of occupancy in such land, and shall not be liable to be ejected. If he make default in paying the rent of such land, the land, together with the buildings or other works thereupon, may be brought to sale, in execution of a decree for arrears of such rent: provided that any such tenant may be ejected for a breach of any condition of his tenancy, for which breach he is liable to ejectment by virtue of a contract between him and his landlord.

Should it also be made transferable by private sale, gift, &c.?

When a tenant has acquired a right of occupancy in any land under the provisions of the section next preceding, if the rent of such land has not been enhanced during the previous ten years, the landlord thereof shall be entitled to enhance such rent so that it may be equal to the rent paid by other tenants for land in the neighbourhood having similar advantages and used for similar purposes, or so that it may be equal to five per centum per annum of the market value of such land.

Note on the rights and status of the cultivating classes by MR. MACKENZIE, *dated 6th January* 1880.

1. ACT X of 1859 was not intended by its authors to effect any radical change in the rights and status of the cultivating classes. This is proved by the following extract from the Statements of Objects and Reasons for the Bill that became Act X:—

The regulations declare that ryots are entitled to receive pottahs for the lands cultivated by them, and to have their rates of rent adjusted on certain defined principles. They also prescribe penalties for the exaction of any excess above the legal rate of rent or of any authorized cess. Further, they recognize the right of *all* resident ryots to the occupancy of the land cultivated by them, so long as they pay the established rent.

I have thought it right to *re-enact* in a concise and distinct form the provisions of the present law relating to the rights of ryots with respect to the delivery of pottahs, the adjustment of rates of rent, and the occupancy of land, and to the prevention of illegal exaction and extortion in connection with demands for rent—(Mr. Currie).

2. What Mr. Currie conceived the provisions of the then existing law to be will be seen from the following sections of the Bill as read a first time:—

Section III.—Hereditary ryots holding lands at *fixed* rates of rent are entitled to receive pottahs at those rates.

All other ryots and cultivators of land are entitled to receive pottahs according to the rates of rent for the time being established in the pergunnah in which the land is situate for land of the same description and quality, or if there be no known and recognized pergunnah rates, according to the customary rates payable for land of a similar description in the places adjacent.

The above rules are applicable not only to the first grant of pottahs, but also to the renewal (where right of renewal exists) of pottahs which may expire, or which may become cancelled in consequence of the sale of the tenure or estate in which the land is situate for arrears of rent or revenue.

Section IV.—Every resident ryot and cultivator has a right of occupancy in the land held or cultivated by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same.

But this rule does not apply to khamar, neej-jote, or seer land, &c., &c. (as at present).

3. The grounds for altering these draft sections to the shape in which they now stand are shown in the following passages of the Select Committee's report upon the Bill:—

We have thought it right to define more particularly the 'hereditary ryots' who are to be recognized as having a right to hold lands at fixed rents * * *. We think that at this late date no one should be required to prove a title antecedent to the Permanent Settlement, and we have framed the amended section accordingly, adding a clause which will have the effect of placing a ryot who has held a fixed rate for 20 years substantially in the position of a ryot who has held from the time of the Permanent Settlement, unless it be shown by the other party that the rent has varied intermediately.

The original Bill, following the phraseology of the existing law, declared ryots not holding at fixed rates entitled to pottahs at pergunnah rates. This expression has been objected to on the ground that there are really no known pergunnah rates. The recognition of a right of occupancy in the ryot implies necessarily some limit to the discretion of the landholder in adjusting the suit of the person possessing such a right. There was a discussion on this subject between the Government of the North-Western Provinces, the Sadr Court, and Board of Revenue, and it was then apparently admitted that it was the acknowledged right of the ryot to hold at 'customary and fair' rates. We have adopted similar phrases, and in this section and sections 17 and 18 have endeavoured to lay down rules by which the 'fairness' of the rate may be ascertained.

The laws in force speak of 'khoodkasht ryots' as possessing rights of occupancy, and in some places[*] the word *khudkasht* seems to be considered as synonymous with 'resident.' Resident was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy; and it appears that after much enquiry it was prescribed by an order of the Government of the North-Western Provinces in 1856 as most consistent with the existing practice and recognized rights that a holding of the same land for twelve years should be considered to give a right of occupancy. We have followed this precedent and altered the section accordingly.

4. It is clear that the intention of the Select Committee was not to change but to elucidate the law and make it more precise; but it is now acknowledged that the effect of these sections in Bengal has been to inflict serious injury on resident ryots, placing them in the position of tenants-at-will in respect of all lands as to which they cannot *prove* twelve years' continued occupancy. This injury was not foreseen, and, as the foregoing extracts show, was, I repeat, *not intended*.

5. It appears to me to be the duty of this Commission to endeavour to give effect now to the *intentions* of the authors of Act X, and to restore, *as far as is now possible*, the provisions of the old law.

6. I have already admitted that it is perhaps in the present day impossible and useless to attempt to rehabilitate the *khudkasht* or resident ryot *totidem verbis*; and I have said that I think we must be content to adopt now a prescriptive test of *residence*. But holding as I distinctly do that long *time*[*] was *not* of the *essence* of the ordinary khoodkasht's title, I would make the term of prescription necessary to entitle a ryot to the occupancy rights of the old *khudkasht* a reasonably short one, just long enough in fact to give reasonable evidence of his *intention* to cultivate permanently the lands he rents. I have suggested that three years is a sufficiently long term to raise this presumption of intention to *settle* and should entitle *any* ryot to a right of occupancy, not of course in khamar, utbandi, or similar lands, but in the ordinary village jote lands.

7. The next point for consideration is what this right of occupancy means.

I hold that it should only protect the ryot against arbitrary ejectment, and does not entitle him to hold at any *priviledged* rate of rent.

8. As I read the law up to 1859, the only class of ryots recognized as entitled to hold at specially priviledged rates (*i.e.*, at lower rates than their neighbours) were those ryots whose rates were *fixed for ever*. The rents of all other ryots might always be raised up to the pergunnah or customary rate by an auction-purchaser, or by any other landlord not bound by special contract to accept a *lower* rate. On the other hand, I believe that, on a *correct* construction of the Regulations and Acts before Act X, no landlord was *legally* entitled to raise the rents of *any* village ryots above the pergunnah or customary *nirikh* or rates.[*]

9. There is no doubt, however, that landlords in Bengal constantly have done so, and that their action has had the seal and sanction of the law courts; and I am not prepared to say that we can now in 1880 ignore all the changes that have taken place in the last 90 years in the relative positions of landlord and tenant throughout Bengal, or that we can now confiscate all the rights to which landlords may perhaps be said to have acquired a prescriptive title. One of these rights is certainly that of enhancing the rent of each individual tenant not entitled to hold at fixed rates.

But in considering the conditions under which enhancement should take place, and the limitations that should be placed upon it, it becomes highly important to remember the ancient position and privileges of the cultivators as a body.

10. Practically the zemindar finds himself powerless to enhance the rent of the individual cultivator, and he has asked the Legislature to strengthen his hands, either by giving him a precise share of the gross produce, or by enabling him to assess the rent of the occupancy tenant by reference to those of tenants-at-will.

This last proposal cannot, I submit, for a moment be entertained. The notion has met with the most complete refutation in the papers contributed by Bengal officers of all classes on Sir Richard Temple's Rent Minutes of 1875 and 1876. There is more to be said in favour of the first suggestion that rent should have a distinct reference to produce; but the reports received make it clear that it would be highly dangerous and unjust to lay down any precise rule of distribution in the law.

11. My own view is that, under the law and custom of Bengal, no zemindar is entitled

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[*] Regulation LI, 1795, section 10.
Ditto VIII, 1819, section 11, clause 5.
Ditto VIII, 1819, section 18, clause 5.

[*] There is a *mass* of evidence to show this; but I will not take up the time of the Commission with a renewal of the discussion, as the point will not be of practical importance if my general proposals are accepted on other grounds.

[*] Mr. Field endeavours to show the contrary in his Note on Enhancement; but I believe that the new and ingenious theory evolved by him from a study of the letter of the Regulations is entirely erroneous. I can show this at length if need be. Here it is enough to say that the idea that landlords were intended by the authors of the Permanent Settlement to have unlimited power of enhancing money rents with reference to the advancing prices of produce, is one that was repudiated by the 'authors' themselves, was unknown to the best of revenue officers from their day to ours, and is inconsistent with Mr. Field's own theory at page 237 of the Digest, that the authors of the settlement were absolutely ignorant of the economical fallacy of fixing revenue payments in money.

to rack-rent *any* cultivator admitted to settlement on the village lands. On his demesne lands (his khamar, nij-jote, or seer lands) he can ask what rates he likes, but on the village lands the rates should be uniform, customary and fair, and such as to *divide** equitably between the zemindar and the cultivator, *in accordance with the custom that may have established itself in the village*, the *net* profits of cultivation after defraying all outgoings and the actual cultivator's wage. This is what I conceive to be the constitutional theory of ryots' rents in Bengal, even at the present day. (*See* also Sir H. Ricket's remarks quoted at page 243 of the Digest.)

12. If this theory be accepted, it is obvious that the only grounds on which a landlord should be at liberty to enhance the rent of a settled individual ryot are—

(1) that he is paying rent at less than the village *nirikh*, or
(2) that he holds lands for which he is not paying rent at all.

I have already admitted that a general rise in the value of produce must *now-a-days* be held to entitle a landlord to a higher rent, always provided that the enhanced profits, if any, derived from such rise in value are *divided* between the landlord and the cultivator. But the cause being general, the landlord should only be able to secure *his* share by effecting a revision of the existing village *nirikh*. If no general *nirikh* exists in a village, the only way of securing satisfactory arrangements for the future is to establish one as soon as may be. Probably the zemindars, if they see that they are not likely to get anything more from the Legislature, which must respect the rights of all classes and not of one only, will consent to accept these principles generally.

13. The process of ascertaining these equitable general rates cannot, I think, be precisely laid down in the law. They can only be ascertained by local enquiry conducted by experienced revenue officers who will pay attention to all the phases of the economic problems involved, and arrive at a just conclusion by weighing in the scales of common sense and equity the conflicting considerations that will always be pressed upon them. I approve generally of the draft sections now before the Commission in which the area of enquiry is limited to the 12 years antecedent thereto. We *must* impose arbitrary limits of this kind if we are to arrive at any practical result. But the law should more distinctly prohibit enhancement on grounds (3) and (4) of draft section 1, unless the proceedings are meant to raise the general rates of a neighbourhood; and I would under ground (1) make it more clear that the individual ryot's rent can only be raised to the rate *generally* ruling in his own neighbourhood. Then, I think, the law should lay down for the guidance of the Settlement Officer the general principle that the new rates are, as far as may be possible, to be so adjusted as that any increased profit from agricultural operations shall be divided between the landlord and the ryot in the same proportion as may be found to have ruled that division at the earliest point of time taken for comparison in the enquiry. This will prevent any ruinous increase of rents, and at the same time serve to establish existing customs and give the landlords in each district what they have, rightly or wrongly, succeeded in actually getting.

14. If this is done, I see no need for recognising any class of ryots with special privileges as to rates—not being absolutely fixed rates. Every ryot of over three years' standing would be protected agaist arbitrary ejectment; but he would have to pay the customary village rates, unless the landlord specially agreed to let him sit at lower rates. At the same time we shall formally recognize the ryot's beneficial interests in the soil, and make his tenant right a valuable possession. It is so in fact now, and my proposals do not, in my opinion, introduce any new principle whatever. They aim only at completing what has been lacking in the legislation on rent since 1793.

A. MACKENZIE.

The 6th January 1880.

Note by MR. FIELD, *dated 13th January 1880, on enhancement, and in reply to Mr. Mackenzie's note of the 6th idem.*

I HAVE read Mr. Mackenzie's *Note* of the 6th instant. I agree with him—

1—that the authors of Act X of 1859 did not intend to effect any radical change in the rights and *status* of the cultivating classes:

2—that according to the law up to 1859 the only class of ryots recognized as entitled to hold at specially privileged rates were those ryots whose rates were *fixed for ever*, (*i. e.*, the *mokarraridars* and *istemrardars*, whose history is traced at pp. 190, 220; 222 of the Digest, and in the judgments in the Great Rent Case—B. L. R. F. B., pp. 215, 309, 318):

3—that on a correct construction of the Regulations and Acts before Act X, no landlord was *legally* entitled to raise the rents of any village ryots above the *pergunnah* or customary *nirikh* or rate:

4—that we cannot solve the enhancement difficulty by settling the rents of occupancy ryots with reference to the rents paid by tenants-at-will:

5—that, according to the law and custom of Bengal, no zemindar is entitled to *rack-rent* ryots having a right of occupancy.

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* It is almost certain that in 1793 it was intended that the cultivator should get the whole net profits, after paying the rent as *then* fixed, or at any rate after it had once been raised to full pergunnah rates; but this privilege has been lost to him, and now the two parties having proprietary interests in the land must *divide* the surplus accruing from the increase in the value of produce since then; and the one who has most risk should get the larger share.

As to the *first* point, Mr. Justice Campbell expressed a similar view in his judgment in the Great Rent Case:—"It is absolutely certain that (whether or not they were strictly and accurately right in the definition adopted) it was the intention of the Legislature to declare and define existing rights—not to create a new class of rights." The intention of the Legislature to which the courts can give effect is, however, not that intention which was in the breasts of the Legislators, but that intention which follows from the natural meaning of the language in which they have expressed themselves. When the first mentioned intention has been clothed in apt language the two intentions will be identical; but when language has not been successfully used, results will follow which the Legislature never designed or contemplated."

As to the *third* point, Mr. Mackenzie makes the following observation in a note on the margin:—"Mr. Field endeavours to show the contrary in his note on enhancement; but I believe that the new and ingenious theory evolved by him from a study of the letter of the Regulations is entirely erroneous. I can show this at length if need be. Here, it is enough to say that the idea that landlords were intended by the authors of the Permanent Settlement to have unlimited power of enhancing money rents with reference to the advancing prices of produce, is one that was repudiated by the 'authors' themselves, was unknown to the best revenue officers from their day to ours, and is inconsistent with Mr. Field's own theory at page 237 of the Digest, that the authors of the Settlement were absolutely ignorant of the economical fallacy of fixing revenue payments in money."

Did I not know the great attention which Mr. Mackenzie has bestowed upon the whole subject, including the contents of the Digest, I may have thought on reading these observations that my colleague had followed the method of the best reviewers, cutting every tenth leaf, and reading about half a page to obtain an insight into the author's views. In order to prevent misunderstanding I think I ought to say that the above-quoted observation does not correctly state the theory put forward in the note on enhancement. I have never thought—and I certainly have not put forward the idea—that the authors of the Permanent Settlement intended landlords to have an unlimited power of enhancing money rents; and I believe there is nothing in the note on enhancement which goes to show that landlords *were* legally entitled to raise the rents of village ryots *above* the *pergunnah* rate. What the note does shew is that under the former Government of the country the amount of revenue to be collected was settled by a periodical *measurement and assessment*; that the pergunnah rate originated in this measurement and assessment; that, inasmuch as the assessment was based upon an average of prices for a period of years, it contained within itself an element of increase of rent as prices rose; that the early Regulations found this system in the country did not interfere with it,[1] and even referred to and acknowledged its existence; that, as soon as *abwabs* were invented (the history of their invention and development is given), this easy mode of enhancement took the place of the old method of periodically raising the pergunnah rate by a measurement and assessment, a process which involved so much more trouble; that, notwithstanding the prohibition of *abwabs* by the Regulations of 1793 and the consequent illegality of this mode of enhancement, the zemindars, as a body, persevered in it and suffered the old method to fall into disuse; that pergunnah rates in consequence died out, and when the Government recently put down *abwabs* with a strong hand, the difficulties of the zemindars arose from the fact of the former method having been lost, while the law of 1859 was found to be unworkable. There is nothing inconsistent with this in the theory at page 237 of the Digest. The authors of the Permanent Settlement did not *introduce* the plan of periodically settling or establishing pergunnah rates by a measurement and assessment. They found this plan in existence, and, though they did not interfere with it, they certainly did not realize its value and importance. Had they not overlooked or been ignorant of the economical fallacy of fixing revenue payments in money, they would never have perpetrated the Permanent Settlement (which by the way was a settlement not of *rent* but of *revenue*), and they would doubtless have actively legislated for maintaining the periodical settlement of pergunnah rates by a periodical measurement and assessment (see remarks at page 202 of the Digest). At a time when there was much waste land and cultivation was extending, the importance of periodical *measurements* must have been very considerable. The *assessment* was merely the mode of making a *pergunnah nirikh*, and the *modus operandi* (something very like which we now propose to restore) is given at pages 197-199 of the Digest. While the *nirikh* thus established was in force (*i. e.*, during the period intervening before a new *nirikh* was made), rents could not, I believe according to the custom of the country, be raised above the rates of this *nirikh*. I have shown that, as a matter of fact, rents were raised by the illegal practice of *abwabs*; but I must beg to disclaim the "new and ingenious theory" attributed to me, *viz.*, that landlords were legally entitled to raise the rents of village ryots above the *pergunnah* or customary *nirikh* or rate.

The account of the assessment given at pp. 197-198 of the Digest in no wise suggests an "unlimited power."

The *fifth* proposition I have expressed in a more restricted form than that in which it is enunciated in paragraph 11 of Mr. Mackenzie's Note. He considers that no zemindar is entitled to rack-rent *any* cultivator admitted to settlement on the village lands. I would restrict the proposition to ryots having a right of occupancy. The Select Committee, who sat upon Act X when it was a Bill, remarked that the "recognition of a right of occupancy in the ryot necessarily implies some limit to the discretion of the landlord in adjusting the rent of the person possessing such a right." Referring to these remarks, Mr. Justice Campbell says :—"If the ryot with a right of occupancy is liable to ejectment unless he pays the highest rate of rent that can be obtained by competition, his position is made the same as a tenant-at-will, and the declaration that he has rights of occupancy appears to me to be a mere mockery."—B. L. R., F. B., 291. At page 201 the Digest I have given some reasons for thinking that ryots other than *khudkashts* had no protection. When Act X widely extended the protected class, it certainly left wholly without protection all ryots who have not acquired a right of occupancy. The courts have so construed the Act, and the law on this point is well settled. I believe the result to be wholly in accordance with the intention of the Legislators of 1859, and with the state of the law before that year. At the same time I believe (and for the reasons given by Sir H. Ricketts, referred to by Mr. Mackenzie, and to be found at p. 243 of the Digest) that no landlord in Bengal can get from any ryot a *rack-rent* in the sense of a rent that will leave the ryot, after the utmost exertion on his part, nothing but the bare wages of labour.

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[1] Mr. Justice Campbell says:—"I imagine that the framers of the early Regulations very probably contemplated periodical readjustment of rates between zemindars and ryots with reference to the value of produce, in the same way as was originally contemplated in Akbar's Settlement."—B. L. R., F. B., 251.

With reference to Mr. Mackenzie's proposal (paragraph 6 of his Note) to reduce the period of prescription necessary to entitle to protection from twleve to three years, I entertain grave doubts as to its policy and expediency. The experience of the past is strong to show that if for the classification of ryots in the existing law a new classification be now substituted the result will be a fresh crop of litigation—a fresh period of disturbed and uncertain ideas as to rights. *Khudkasht ryots* were the only ryots privileged and protected up to the passing of Act X of 1859. Two elements went to make up a *Khudkasht*—(1) residence in the village; (2) occupation of land forming part of the village. Act X dispensed with the former, and settled the unsettled ideas as to the latter by fixing a twelve-year period of prescription. It is not said in the interest of the ryots that (1) this change in the law has prejudiced them as a body; (2) that we ought to restore the law to the *status in quo ante* Act X. Before we can fairly estimate the value of these two allegations, we must have a definite idea as to what was the state of the law before Act X was passed. This law was, I am afraid, not very definite, and it is therefore difficult to have a definite idea about it. It has been said that any period of residence however short, and any occupation of land however brief, were sufficient to create a *khudkasht*, and that there is no doubt about this. To show that there is very considerable doubt, it is unnecessary to multiply authorities. The matter was very fully discussed and inquired into in the judgments in the Great Rent Case, from which I shall quote two opinions :

Mr. Justice Campbell said :—"At the time of the passing of Act X of 1859, then the state of things was this : the tenures and rents of the ryots were still for the most part regulated by the old customs of former times. But two things specially required legal definition—

> "*First.*—There was doubt as to the mode or prescription by which a *khudkasht* or occupancy tenure was acquired, and which tenures were of this character. It was not certain whether mere settlement in the village on the ordinary terms, without limitation of tenure, gave such a right, or what length of prescription established that right. The various sale laws had also introduced a large element of confusion : different estates being variously affected according to the date of sale. And, what is perhaps most important of all, owing to the absence of public records in Bengal, the perishable nature of private evidence, and the discredit attaching to private documents and oral evidence in this country, it was very difficult to prove whether a ryot's holding was really ancient, or what was the date of its creation. The oldest holdings were imperilled by the absence of reliable proof.
>
> "*Second.*—There was an entire want of any regulated and defined legal mode of enhancing the customary money rates."—(B. L. R., F. B. 257.)

Mr. Justice Steer expressed himself thus :—"Great and undoubted, however, as the above concessions were in favour of the above always somewhat privileged class of ryots, they were altogether eclipsed by those which the Act conferred on the next class of ryots. That a right of occupancy was acquired by anything short of an occupation from a period prior to the Permanent Settlement—an occupation which entitled the ryot to be called a *khudkasht* ryot—has always been, I think, a matter of doubt. But no manner of doubt can be entertained that the twelve-year occupancy right was altogether unheard of before the Act suddenly conferred the right."

"What ryots were entitled under the old laws to be called *khudkasht* ryots, and what ryots were entitled to be considered as ryots who had acquired a prescriptive right of occupancy, are subjects which, I think, have never been cleared up either by the express authority of law, or by the authority of any judicial ruling. Are *khudkasht* ryots then, as spoken of in the Regulations, those, and exclusively those, who were *khudkasht* at the time of the Permanent Settlement; or does the term *khudkasht* embrace also those ryots who, since the time of the Permanent Settlement, had, by a long residence in the village in which they held and cultivated land, acquired a prescriptive right of occupancy? These were, I think, even up to the passing of Act X moot questions, and are so still."

"While no doubt exists as to the right of those ryots who, from generation to generation, have cultivated the lands of the village in which they reside for a period antecedent to the Permanent Settlement, and who without any doubt are entitled to be called and classed with *khudkasht* ryots, the greatest doubt exists as to whether any other class or description of ryots are entitled to be called *khudkasht* ryots. If any ryot, whose tenure came into existence since the Permanent Settlement, can by any means be called a *khudkasht* ryot at all, it certainly is not the ryot who simply lives in the village and cultivates the land of the village. To be a *khudkasht* ryot at all implies that the ryot must not only be a cultivator of lands belonging to the village in which he resides, but he must be an hereditary husbandman. A *khudkasht* right is not acquired in a day, but is transmitted; and it has never, so far as my knowledge extends, been laid down what exact length of holding gives a title to a tenant to consider himself a *khudkasht* ryot."

"Certainly, the old regulations seem to point to other than those undoubted *khudkasht* ryots whom the Permanent Settlement found upon the land; but what length of holding constituted a right by prescription has never been definitely or inflexibly laid down. If decisions are to be found in which a prescriptive right was deemed established by an occupation short of the Permanent Settlement, there are, on the other hand, plenty of decisions to show that length of occupancy was not deemed to entitle the tenant to be considered anything better than a tenant-at-will. If any other but the ancient ryot occupying from generation to generation had the right of occupancy, no others had it; and therefore, in a vast majority of cases, Act X by the twelve-year rule of occupancy has created rights which never existed before."

Ryots who resided in and held land belonging to the village at the time of the Permanent Settlement were undoubtedly *khudkasht*, and probably the period of residence and occupation was then immaterial and remained immaterial for several years, while living evidence was forthcoming to prove residence and occupation at the time of the settlement. As time passed and such living evidence become non-available, the natural substitute would be proof of living in the village and cultivating for a number of years. As has happened in all countries, the period of prescription from which the right was to be inferred came to be regarded as the origin of the right; and in later times some considerable period of residence and cultivation were regarded as necessary to make a *khudkasht*. From analogy to the period of limitation for immovable property, the period of twelve years came to be considered as the normal time.

In support of the view that a considerable period of residence and cultivation was regarded necessary in later times, probably since 1822, in order to give the rights of a *khudkasht*, I shall refer to a few opinions of those who have most carefully considered the subject. Speaking of the state of things about the time of the Decennial Settlement and subsequently, down to, but before, the passing of Regulation XI of 1822, Mr. Justice Trevor says in his judgment in the Great Rent Case:—"What then are those rights and interests recognized by law belonging to the ryots—for with them we are alone concerned—which limit and control the right of the zemindar in his own estate? At the time of the Decennial Settlement the ryots were in Bengal, as in other parts of India, divided into *khudkasht* or resident and *pyekasht* or non-resident. It has indeed been contended before us that time is of the essence of a *khudkasht* tenure: that a ryot simply residing in a village in which his land is, is not a *khudkasht* ryot; and that in order to constitute a *khudkasht* ryot under the Regulations he must be a resident-hereditary ryot, and that if he has not succeeded by right of heirship he does not fall within that class of tenants. But it appears to me that, whether we look to the etymology of the word or to the thing itself, there is no reasonable ground for question. *Khudkasht* ryots are simply cultivators of the lands of their own village, who, after being once admitted into the village, have a right of occupancy so long as they pay the customary rents, and therefore with a tendency to become hereditary, and with an interest in the produce of the soil over and above the mere wages of labour and the profits of stock; in other words, above the cost of production."

"These tenants seem at the settlement, practically and legally, though not by express statute, to have been divided into two classes, the *khudkasht kadimi*, and the simply *khudkasht*, or those who had been in possession of the land for more than twelve years before the settlement, and those whose possession did not run back so long. Both by the Hindu and Mahomedan law, as well as by the legal practice of the country, twelve years had been considered sufficient to establish a right by negative prescription, that is, by the absence of any claim on the part of other persons during that period; and hence the doctrine which has obtained that *khudkasht* ryots in possession twelve years before the settlement were under no circumstances, not even on a sale for arrears of revenue, liable either to enhancement of rent, or eviction from their holding, so long as they paid the rents which they had all along paid."—(B. L. R., F. B., 214-215.)

We shall presently see that other high authority assigns a very different meaning to the term *khudkasht*. In all probability the derivation of the word will help but little to elucidate the question. Mr. Trench's little volume supplies abundant instances of words, the meaning of which came to be wholly altered by the facts forming the history of their use; and the word "*khudkasht*" in all probability fifty years after the Permanent Settlement carried in its signification something of the changes which half a century had brought about. Mr. Justice Trevor is probably right in his view that at the time of the Decennial and Permanent Settlements time was not of the essence of a *khudkasht* tenure. In those days population had not commenced to press upon the land; and to use an oft-repeated phrase, the competition was between zemindars for ryots not between ryots for land. With the progress of the country and the increase of population the usual results followed, and, when the competition came to be between ryots for land, those who had been for a length of time in occupation naturally had an advantage over new comers.

Mr. Justice Trevor discussing a later period says in the same judgment:—"But when Regulation XI of 1822 was passed, the use in section 32 of that law of the terms *khudkasht* *kadimi* ryot, or resident and hereditary ryot with a prescriptive right of occupancy, to designate the cultivator, who would not be liable to eviction on a sale for arrears of revenue, gave rise to the doctrine that *khudkasht* ryots who had their origin subsequent to the settlement were liable to eviction, though if not evicted, they, under section 33, could only be called upon to pay rents determined according to the law and usage of the country; and also *that the possession of all ryots whose title commenced subsequent to the settlement was simply a permissive one*, that is, one retained with the consent of the landlord. Again, by Act XII of 1841 and Act I of 1845 (which repealed the former), a purchaser acquired his state free of all encumbrances which had been imposed on it after the time of the settlement, and he was entitled, after notice given under section 10 of Regulation V of 1812, to enhance at discretion—anything in the Regulations to the contrary notwithstanding—the rents of all under-tenures in the said estate, and to eject all under-tenants with certain exceptions, amongst which are *khudkasht kadimi*, but not simple *khudkasht*, ryots. It follows that these laws distinctly gave the purchaser the power to eject a *khudkasht* ryot whose tenure was created after the Permanent Settlement, and, if not ejected, they are liable to be assessed at the discretion of the landlord. This word 'discretion' entirely annihilated the rights of the *khudkasht* tenants created subsequent to the settlement in estates sold under these laws. It reduced them from tenants with rights of occupancy, so long as they paid the established rate of the pergunnah, or the rate which similar lands paid in the places adjacent, into mere tenants at the will of the zemindar, who might in any year eject them, and place in their stead any tenant competing for the land. It is, in short, introducing into this country competition in the place of customary rents."—(B. L. R., F. B., 219.)

Mr. Justice Trevor here points out the natural effect of the sale laws upon the rights of ryots even in estates which had not come under the actual operation of these laws. This is merely an example of that process of which the history of all countries furnishes instances, and by which rights having many points of similarity are constantly tending towards a more complete unity of incidents.

Sir Barnes Peacock in his judgment takes a very much more decided view. He says:—"I do not believe that, even before the Permanent Settlement, every cultivator who resided in the village in which his lands were situate, whether let into possession for a term or only as a tenant-at-will, or to hold from year to year, necessarily became a *khudkasht* ryot. The definition of *khudkasht* in Wilson's Glossary (287) is a 'cultivator of his own hereditary land.' The words *khud* self or own, and *kasht* to sow, show that the term has reference to some proprietary rights, rather than to the fact of residence in the village. In column 267 of the same Glossary, *tit-khudkasht*, the definition is 'a resident cultivator—one cultivating his own hereditary lands, either under a zemindar or a coparcener, in a village.' In Bengal one class of them holding their lands at fixed rates by hereditary right sometimes sub-let them, except the part about their dwelling, in which they continue to reside, and, although ceasing to cultivate and engaged in trade or business, they retain their designation of *khudkasht*. The term is also applied in the North-Western Provinces to lands which the proprietor or the payer of the Government revenue cultivates himself.

"A *khudkasht* ryot probably derived his title by descent from or succession to one of the old village community, or some person who in ancient times had acquired a proprietary right in the land under the old Hindu or Mahomedan law by reason of his having reclaimed it. Menu says—'Sages pronounce cultivated land to be the property of him who cut away the wood, or who cleared and tilled it.'—(Chapter IX, paragraph 44.) So property in waste land was, according to the Mahomedan law, established by reclaiming it with the permission of the Imam according to Aboo Hanifa, and by the mere act of reclaiming it according to Aboo Yusof and Mahomed (*see* Baillie on the Land-tax of India, Chapter VI, paragraph 42). But, however this may be, it is clear that since Regulation II of 1793, by which the right of property was declared to be vested in the lanholders, *i. e.*, in the zemindars and independent talookdars, property in land which formed part of a permanently settled estate could not be acquired by reclaiming it from waste. How then could it be acquired except by contract or adverse possession, or by prescription going back as far as to the time of the Permanent Settlement? I am of opinion that neither a right of proprietorship nor a right of occupancy could have been acquired by any other means in a permanently settled estate."

"The Directions to revenue officers, paragraph 130, show that the right depends upon prescription. It is there said: 'It is impossible to lay down any fixed rule defining what classes of cultivators are to be considered entitled to hold at fixed rates. They are known in different parts of the country by different names, as *chupperbund, khudkasht kadimi, mouroosee hukdar, &c.*, all of which terms imply attachment to the soil or prescriptive right. Those who have no such right are commonly called *kutcha assamis*, or *pyekashts*. It has sometimes been supposed that all ryots resident in the village (*khudkasht*) are of the former class, and that those who reside in another village (*pyekasht*) have no rights. But there are frequent exceptions to this rule. Many cultivators residing in the village are mere tenants-at-will, whilst those residing in neighbouring villages may have marked and recognized rights. Prescription is the best rule to follow.'"

"I am clearly of opinion that a ryot who, after the date of the Permanent Settlement, and specially after Regulation V of 1812, was let into possession by a zemindar to hold as tenant for a fixed term, or at will, or from year to year, or without defining the period during which his tenancy was to continue, did not before Act X of 1859, merely by reason of an occupation for twelve years, become a *khudkasht* ryot"—(B. L. R., F. B., pp. 318-320.)

Mr. Shore (afterwards Lord Teignmouth) considered that the rights of the ryots depended upon long occupancy, and Mr. Harington in this Analysis quotes him on several occasions.

The following are a few brief passages:—"It is understood that the ryots by *long occupancy* acquire a right of possession in the soil, and are not subject to be removed."..... "To require that the pottahs should be given for a definite time, as proposed by some of the Collectors, would diminish the force of that prescription which has established a right of occupancy in favor of the ryots."....."On the whole, therefore, I do not think ryots can claim any right of alienating the lands rented by them by sale or other mode of transfer, nor any right of holding them at a fixed rent except in the particular instances of *khudkasht* ryots, who, *from prescription,* have a privilege of keeping possession as long as they pay the rent stipulated for by them"—(*Extract from Harington's Analysis*, pp. 267, 281, 301.)

Mr. Shore expressed a strong opinion that no perpetual right of possession, on condition of paying a fixed rent, should be conferred on those ryots who had not *then* a declared or prescriptive title to such—(*Extracts*, p. 305). Practically this opinion was embodied in Regulation XI of 1822 (*see* B. L. R., F. B. 252.)

The intention of the Legislature may be inferred from Act XII of 1841, section 27, which speaks of "*khudkasht* or *kadimi* ryots having rights of occupancy at fixed rents or at rents assessable according to fixed rules under the Regulations in force." So section 16 of Act VIII (B.C.) of 1865 speaks of *khudkasht* ryots, or resident and hereditary cultivators.

I think the above will show that very great doubt and difference of opinion have prevailed amongst the highest authorities as to the mode in which *khudkasht* ryots were created in more modern days, that the law on this point before Act X was most uncertain, and that the task of attempting to restore that law is now almost an impossible one. The village community, if it ever existed in Lower Bengal, has long been broken up, and the definition of a "village" would raise insuperable difficulties. Doubtless this was felt by the framers of Act X of 1859, and influenced them to abandon the element "residence in the village." The effect of this was to extend privilege and protection to the *pyekashts*, and the selection of twelve years as the necessary period of prescription for occupancy did not of itself cut down the rights of any *khudkasht;* but although Act X did not expressly interfere with any customs not clashing with its provisions, people came to consider this Act to be a complete Code, and litigants in consequence made no effort to give evidence of customs. This, and not any inability to prove continued occupancy for twelve years (as supposed by Mr. Mackenzie in paragraph 4 of his Note), I believe to be the measure of the mischief done by Act X. Our new Bill proposes to save such customs expressly; and, this being so, the classification of Act X can no longer be said to cut down the rights and benefits of the ryots as a body. This classification has now been established for twenty years. Change—especially change in the boundaries of established rights—is not advisable; and, in the above view of the whole matter, the substitution of a fresh classification of rights is, to my mind, now inexpedient. That any considerable number of the cultivating class will be benefited by such a change has not been argued, and would, I think, be very difficult, if not impossible, to prove. The small portion in whose interest the change is proposed have not asked for it, nor have mofussil officers or other persons asked it on their behalf; and I am afraid that the benefit intended for the ryots as a class will be more than neutralized by the disturbance of ideas and by the litigation that will inevitably ensue—by the unwillingness of the zemindars to accept what they will regard as a further encroachment on their rights—and by the lessened estimation and diminished actual value that will necessarily attach to a right of occupancy, when any squatter can acquire it in the short space of three years.

The 13*th January 1880.* C. D. FIELD.

Note by Mr. Mackenzie, *dated 20th January 1880, on enhancement, in reply to the Hon'ble Mr. Field's note of* 13*th idem.*

It is to me so satisfactory to find that Mr. Field now accepts the majority of the positions taken by me in my note of the 6th instant that I do not care particularly to enquire whether he has not in some respects a little shifted his ground. We are all, I hope, arguing in order to arrive at truth and equity, and not for the sake of a barren verbal victory. But there are still some points of importance on which we differ, and I feel bound to set out somewhat more in detail my reasons for declining to accept Mr. Field's conclusions where we are still apparently at variance. Mr. Field considers it his duty to start doubts even where he does not himself personally endorse them. I am not without hope that he will eventually be found on the same side as myself. Meantime, I must be content to argue against him.

2. In the first place, Mr. Field endeavours to vindicate the theory of enhancement enunciated in the appendix to the Digest from the criticisms casually passed upon it in the margin of my former note. I had said in that note that, on a correct construction of the Regulations and Acts before Act X, no landlord was legally entitled to raise the rents of any village ryots above the pergunnah or customary *nirikh* or rates. I then remarked that "Mr. Field had endeavoured to show the contrary in his note on enhancement; but that I still held that "the idea" (apparently adopted by him) "that landlords were entitled by the authors of the Permanent Settlement to have unlimited power of enhancing money rents with reference to the advancing prices of produce is one that was repudiated by the authors themselves, was unknown to the best revenue officers from their day to ours, and is inconsistent with Mr. Field's own theory at page 237 of the Digest, that the authors of the Settlement were absolutely ignorant of the economical fallacy of fixing revenue payments in money."

3. Mr. Field now avers that the foregoing observation does not correctly state the theory put forward in his note on enhancement. That no further injustice may be done him, I reproduce here his own condensed version of the argument in that note:—

"I have never thought, and certainly have not put forward the idea, that the authors of the Permanent Settlement intended landlords to have an unlimited power of enhancing money rents; and I believe there is nothing in the note on enhancement which goes to show that landlords *were* legally entitled to raise rents of village ryots *above* the *pergunnah* rate. What the note does show is that, under the former Government of the country, the amount of revenue to be collected was settled by a periodical *measurement and assessment*; that the pergunnah rate originated in this measurement and assessment; that inasmuch as the assessment was based upon an average of prices for a period of years, it contained within itself an element of increase of rent as prices rose; that the early regulations found this system in the country did not interfere with it, and even referred to and acknowledged its existence; that as soon as *abwabs* were invented (history of their invention and development is given), this easy mode of enhancement took the place of the old method of periodically raising the pergunnah rate by a measurement and assessment—a process which involved so much more trouble, that, notwithstanding the prohibition of *abwabs* by the Regulations of 1793 and the consequent illegality of this mode of enhancement, the zemindars as a body persevered in it and suffered the old method to fall into disuse; that pergunnah rates in consequence died out, and when the Government *recently* † put down *abwabs* with a strong hand, the difficulties of the zemindars arose from the fact of the former method having been lost, while the law of 1859 was found to be unworkable. There is nothing inconsistent with this in the theory at page 237 of the Digest. The authors of the Permanent Settlement did not *introduce* the plan of periodically settling or establishing pergunnah rates by a measurement and assessment. They found this plan in existence, and, though they did not interfere with it, they certainly did not realize its value and importance. Had they not overlooked or been ignorant of the economical fallacy of fixing revenue payments in money, they would never have perpetrated the Permanent Settlement (which by the way was a settlement, not of *rent*, but of *revenue*‡), and they would doubtless have actively legislated for maintaining the periodical settlement of pergunnah rates by a periodical measurement and assessment (see remarks at page 202 of the Digest). At a time when there was much waste land, and cultivation was extending, the importance of periodical *measurements* must have been very considerable. The *assessment* was merely the mode of making a *pergunnah nirikh*, and the *modus operandi* (something very like which we now propose to restore) is given at pages 97-199 of the Digest. While the *nirikh* thus established was in force (*i. e.*, during the period intervening before a new *nirikh* was made) rents could not, I believe according to the custom of the country, be raised above the rates of this *nirikh*. I have shown that, as a matter of fact, rents were raised by the illegal practice of *abwabs*; but I must beg to disclaim the 'new and ingenious theory' attributed to me, *viz.*, that landlords were legally entitled to raise the rents of village ryots above the *pergunnah* or customary *nirikh* or rate."

The account of the assessment given at pages 197-98 of the Digest in no wise suggests an "unlimited power."*

* I may observe that I spoke of an unlimited *power* of enhancing *with reference to the advancing prices of produce.*
A. M.

† When?
A. M.

‡ Who said it was otherwise?
A. M.

4. Mr. Field's statement of his case is undoubtedly technically and literally correct, but I think it might have been clear to him from the whole tenor of my note, and especially from the marginal remark on paragraph 4, that my argument, in its complete shape, was not merely that before Act X no landlord was legally entitled to raise the rents of any village ryots, above the pergunnah or customary rate, but, further, that the landlord had no legal means given to him of effecting, by anything he could do, the raising of that pergunnah rate itself. He had to take it as he found it. 'What it was' being supposed to be a problem of fact to be solved by local enquiry. We know, of course, that practically it could not be so discovered; but the Legislature did not fully and unreservedly recognize that truth till 1859. We know also that landlords did arbitrarily raise rents from the Permanent Settlement up to 1859. My position is that their right to do so had no legal or constitutional basis, though I am ready now to accept, under proper legal restrictions, the custom they have succeeded in establishing.

5. I now proceed to examine Mr. Field's theory more fully.

At starting he informs us (page 196 of the Digest) that he will refuse to look at anything that has been 'said or written, or proposed or discussed,' before the regulations were passed, even though it was said or written, or proposed or discussed, by the members of the Legislature itself. "Much more will he refuse to look at anything 'said or written, or thought or opined,' before the Permanent Settlement, or a quarter of a century after it." He will be guided only by the actual language of the Regulations themselves. As to this canon of interpretation, I will only say that even if it is correct generally, which I doubt, it certainly is in this connection a very mistaken one. The Regulations were not the deliberate outcome of the discussions of a separate legislative assembly, but are merely resolutions of the executive Government, which the very men who passed them often acknowledged, in documents quite as formal, to be mistaken or to have failed to express their meaning or give effect to their intention. There can at any rate, *for purposes like those of this Commission*, which are not judicial in any sense—there can, I say, be no better guide to the meaning and scope of a regulation, and the facts it was intended to meet or create, than any discussions in connection with it where these can be discovered on the records of Government.

6. In this particular case, however, I am ready to abide for the moment by the letter of the Regulations, inasmuch as I think that Mr. Field's theory of enhancement does not really

rest on the law, but on his own peculiar interpretation of the law. He quotes clause 2 of section 60 of Regulation VIII of 1793 as follows :—

"No actual proprietor of land, or farmer, or persons acting under their authority shall cancel the pottahs of the *khudkhast* ryots, except upon proof that they have been obtained by collusion; or that the rents paid by them within the last three years have been reduced below the rate of the nirikbundy of the pergunnah; or that they have obtained collusive deductions; or upon a *general measurement of the pergunnah for the purpose of equalising and correcting the assessment.*"

He then goes on to say—

"It is clear from these provisions that the pottahs of ryots other than khudkhast ryots could be cancelled, and that such other ryots had no protection whatever from enhancement,* while the khudkhast ryots were protected from enhancement beyond the pergunnah rate (that is, the nirikbundy made at the last measurement and assessment) until a new measurement and assessment were made, and a higher rate established as the result. Looking back from this distance of time, it is impossible to help regretting that the Legislature, instead of assuming this process to be ordinary and usual, did not expressly declare that proprietors were entitled to make a measurement and assessment for the purpose of correcting the pergunnah rates; at the same time laying down some rules as to the mode in which the process was to be conducted and the periods within which it might be repeated. It may, however, well be that the thing was so familiar to every one at the time that the necessity for such rules occurred to no one."

* This is a very wide, and I believe a very erroneous, deduction. *All* ryots were originally protected, as will be seen further on, and by Regulation IV of 1794, section 5, pottahs at the established rates were to be given to *all ryots* who applied for them.
A. M.

Surely, rather, it is surprising that this theory occurred to no one before the year 1879.

7. But the fact is, I believe, that Mr. Field has entirely mistaken the meaning and object of the clause about the measurement and assessment. The very words of the section show that the process was to be employed, not for *enhancing* the pergunnah rate, but for *equalising* and correcting inequalities of assessment existing within the pergunnah. Mr. Field seems to me to have missed the significance of section 60 altogether.

Section 54 of the Regulation directed proprietors to '*revise* the impositions upon ryots, called abwab, &c., and to *consolidate the whole* with *the assul* into one specific sum.' *The assul* is thus, it will be seen, regarded as a sum certain, to find which involved no difficulty. It was in fact, as we know, the proper pergunnah rate. It was, in the view of the Regulation, only the abwabs that wanted revision and final settlement. Proprietors of large estates were to take up this revision by *pergunnahs*, and to complete it by April or September 1792, that being the date specified in the rules (promulgated originally in 1789 and 1790) for the delivery of pottahs in the manner prescribed in the sections following.

Section 55 forbade the imposition of new abwabs in future.

Section 56 set forth that in the time landlords and ryots would probably enter into agreements for a specific sum for a certain quantity of land, irrespective of the kind of produce grown on it; but as it was frequently the established custom to vary the pottah according to produce, engagements recognizing this custom were to be *specific* as to the quantity of land, species of produce, rate of rent, &c.

Section 57 prescribed 'that the *rents* to be paid by the ryots, by *whatever rule or custom regulated*, should be specifically stated in the pottah.' If *rates* only could be specified, or where rents were paid in kind, the details and conditions were to be clearly set out. (I note in passing that rents are here looked on as regulated by a then existing recognized *rule and custom only*.)

Section 58 directed each landlord to prepare forms of pottah conformable to the foregoing rules, and adapted to the circumstances of his estate. These were to be approved by the Collectors and registered, and every ryot was entitled on application to receive a pottah in the approved form.

Section 59 declared that the ryot might demand a pottah as above when once *his rent had been ascertained and settled* (*i. e.*, as provided in section 54), and prescribed a penalty for refusal to grant this.

Section 60 then went on to provide for the treatment of *leases* and *pottahs found in existence* when the foregoing revision might be begun, and declared in its first clause that all leases to under-farmers and ryots (of every class), made previous to the Settlement, and not contrary to any regulation, were *to run their term*, unless proved to have been obtained by collusion or from unauthorized persons. Then comes clause 2, which is quoted above.

8. Now obviously, as it seems to me, the whole of section 60 is meant to deal with cases of *existing pottahs*, and clause 2 merely contemplated *one* kind of *existing pottah*, not dealt with by clause 1—a pottah, that is to say, that *would not necessarily expire after a fixed term.* These pottahs without specification of term were those held by *khudkasht* ryots, and were not to be interfered with, unless (1) they had been obtained at unduly low rates by collusion; or (2) the rates had been reduced below the pergunnah rate within three years preceding 1790; or (3) there had been collusive deductions given in them; or (4) unless a general measurement of the pergunnah took place in order to *equalise* and *correct* the assessment. The last clause of section 54 implies that the operation of revision was to be done once and for all. The whole object of clause 2 was to prevent those *khudkashts* who were holding at *less* than pergunnah rates from having those rates increased under *ordinary* circumstances in the course of that revision. It is impossible to believe that if this measurement and

assessment was meant to be an ordinary and recurring way of raising the pergunnah rate this would not have been distinctly stated, instead of being wrapped up in a single phrase, coming in quite incidentally in a section regulating merely the treatment of existing *bemiydia pottahs.*

9. *Section* 61 fixed the dates (in 1792) by which pottahs were to be delivered, and enacted that, "after the expiration of the year 1198, *no engagements* for rent, *contrary to those ordered above, were to be held valid.*" Surely these terms contemplate a completed, and not a constantly recurring, operation of revision and assessment.

10. But after all the conclusive answer to Mr. Field's argument is that the word *assessment* has no reference whatever to ryots' rents. Throughout the papers of the time it refers only to the sudder jumma or Government demand of revenue. If Mr. Field will refer to Mr. Shore's "proposition deduced from the arguments in his Minute" of July 1789, from which these sections are taken *verbatim*, and will first study the meaning of the words "assessment" and "*tukseem*" in paragraphs 463-69 of the Minute itself and throughout the appendices to the fifth report, he will see that the operation referred to in clause 2 of section 60 was merely a possible part of the process of *distributing the demand of sudder jumma.* The zemindars were bound to distribute this over the pergunnahs and villages of their estates that it might be clear, in case of transfers, what burden of jumma each pergunnah or village bore. The clause, therefore, simply means this: that, if in the process of distribution of sudder jumma according to assets it was found that khudkasht ryots in any village held pottahs at *less* than the pergunnah rate, they might be raised thereto if this enhancement was necessary to enable their village to bear its fair share of the *assessment.*

11. Mr. Field says that the authors of the Permanent Settlement found the plan of periodically settling or establishing pergunnah rates by a measurement and assessment in existence, and failed to realize its importance. I deny that they found any such plan in existence. He thinks that there were rules for commuting the State share of the annual produce into money rents, and that those rules were periodically (he says decennially)* revised according to the price of produce. I deny that any such general practice or custom existed at the time of the settlement, or for many a long year before that. He has been misled apparently by the following passage in Mr. Justice Campbell's judgment in the Great Rent Case (B. L. R., Full Bench, page 251):—

> *I imagine* (says Mr. Campbell) that the framers of the early regulations *very probably* contemplated periodical re-adjustment of rates between zemindars and ryots with reference to the value of produce in the same way as was originally contemplated in Akbar's settlements (Elphinstone, page 476), the plan of which was that the money rates were to be fixed every ten years on the average rates of the preceding ten; that is, the grain rates remaining the same, the money rates were to be adjusted in proportion to the average price of grain. *But no express provision was made to this effect in the Regulations of* 1793.

Quite so; and if, instead of trusting to Mr. Justice Campbell's "imagination" and Akbar's original intention, we refer to the appendices to the fifth report, especially to Mr. Grant's Analysis of the Finances and Revenues of Bengal, and Mr. Shore's review of that, in paragraphs 10 to 150 and paragraphs 437 to 447 of his Minute of June 1879, we shall see that Akbar's intention had never been carried out; while, reading further, we shall learn what the authors of the Permanent Settlement did actually contemplate in the matter of ryot's rents.

12. Mr. Shore assumes as almost axiomatic that it was only an increased demand upon the zemindar by Government that could possibly warrant an increase in his demand upon his under-tenants or ryots (paragraphs 378 to 389). He says it is the "custom of the country" that zemindars 'give pottahs to their tenants, stipulating that their rents shall remain the same as long as his quit-rent is unaltered.' The rents to be fixed in the pottahs to be given under the new assessment then pending would, Mr. Shore said, "become a new assul jumma for each ryot, and ought to be as sacred as the zemindar's quit-rent." Indeed, we know from the appendix to the Select Committee's Report of 1832 that Mr. Shore definitely proposed to "fix the maximum rates payable by the cultivator to the zemindar at those actually in force when the Permanent Settlement was introduced, which, though confirming existing illegal cesses, would at any rate have placed a bar against further abuse, and given a precise limitation to the landlord's demand. The local or pergunnah rates, left undefined, were, however, preferred." (p. 24.)

In the Behar resolutions it was distinctly prescribed that if there was any established and recorded jummabundi, that was to be the rule for demanding the rents which the zemindars were to follow in future.

Lord Cornwallis, in his Minute of 18th September 1789, discussing the expediency of making the settlement permanent, spoke of the great advantages given by this "to the zemindars, talookdars, *and ryots.*" Mr. Shore, in his Minute of the same date, said the regulations "were principally calculated for the ease and security of the ryots"—an utterly meaningless phrase if they were intended to be left liable to periodical measurement and enhancement. Again, one of his objections to making the settlement permanent was that it confirmed all the existing taxes (abwabs) levied by zemindars on their estates, while it prohibited any new taxes in future. And to prohibit such, is (said Mr. Shore) "saying to the landlord, you shall not raise the rents of your estates!" His main objection to permanence was in fact that the Government had no clear knowledge of what the ryots were paying, and could afford to pay; and his assumption throughout is that they would never pay more than they were doing if the settlement were made permanent. Lord Cornwallis entirely endorses this in his Minute of the 3rd February 1790. The only ways Lord Cornwallis recognized as open to a landlord after 1793 for raising his rents were (1) "inducing the ryots to cultivate the more valuable articles of produce" (*i.e.*, those that pay a higher rate in the established nirikhbundis); and (2) clearing the waste lands.

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* See paragraph 378 of Mr. Shore's Minute.

13. Mr. Field in his note repeats his statement that, if the authors of the Permanent Settlement had not overlooked or been ignorant of the economical fallacy of fixing revenue payments in money, they would never have perpetrated that settlement, and would doubtless have actively legislated for maintaining the periodical settlement of pergunnah rates by a periodical measurement and assessment. Shades of Grant, Shore, and Cornwallis! If there was one thing those great men did *not* overlook it was the relation of *specie* to produce. I could quote a dozen passages, but will content myself with one. Lord Cornwallis, in his Minute of 3rd February 1790, arguing that the assessment will not be more than the zemindars can permanently pay, writes:—

"Equally favourable to the contributors is the probable alteration in the value of silver; for there is little doubt but that it will continue to fall as it has done for centuries past in proportion as the quantity drawn from the mines and thrown into the general circulation increases. If this be admitted, the assessment will, however, gradually lighten, because as the value of silver diminishes, the landholder will be able upon an average to procure the quantity which he may engage to pay annually to Government with a proportionately smaller part of the produce of his lands than he can at present."

Lord Cornwallis would have applied the same argument *mutatis mutandis* to the ryots' rents. Not to the land revenue, but to the Company's trade, and, in the distant future, to general taxation, direct or indirect, did the Government of 1793 look for increased resources when Government should require them.

14. I still hold that under the old customary law of Bengal no landlord could rack-rent any cultivator *admitted to settlement on the village lands.* Mr. Field says that *under Act X* he may not rack-rent any ryot having a *right of occupancy,* and draws the line there. Our statements do not directly clash. I hold that before Act X the zemindar could properly only demand established rents from settled ryots, meaning khudkhasts. Mr. Field admits this. Pyekhasts paid *less* than the village rates as a rule. So the only effect of Act X in this respect has been, as I said before, to injure the khudkhasts. (I may say in passing that I have no doubt the old law and custom of the country made the pergunnah rate a maximum rate for *all* classes of ryots, khudkhast or pyekhast.)

15. But Mr. Field and I differ as to what constituted a *khudkhast,* and this difference becomes important when considering the question of ejectment at the pleasure of the zemindar and my proposal to protect from such ejectment all ryots settled for three years or more. It is true that Mr. Field professes that he only desires to show that doubt and difference of opinion prevailed among the authorities, and that the law before Act X was uncertain; but his whole argument leans to one side, and is designed to support his conclusion that it is impossible now to attempt to restore in any shape the old state of things. I am, of course, well aware of all the mischief done to the ryot's position by the neglect of the Legislature, by the constructions put upon the sale laws, and by the narrow technical rulings of the courts. But my contention is that, notwithstanding all this, the ryot has practically retained certain simple but fundamental rights which it is still open to us to recognize and establish on a definite basis, and I hold that to do this would benefit, not only the ryot, but the zemindar and the government of the country. I must, however, follow Mr. Field's note for the present.

16. Mr. Field sets himself to prove that the law, as in force before Act X, did not recognize a man as a khudkhast ryot unless he had been *long* settled in the village. His proofs are taken from the remarks of the Judges in the Great Rent Case, supplemented by a few quotations from Harrington's Analysis. He has been led away from the sound and reasonable theory enunciated in his own introduction to his edition of the Bengal Regulations, page 24. There he showed us that every man cultivating land in his own village was a khudkhast, and that such tenants *once induced to settle* in a village were fostered and developed into permanent tenants. That is exactly my contention, that the test of the tenure is the man's admission to the village and his intention of settling there. Mr. Field *now* says that he was not recognized unless he had been long there, at the very least twelve years, during which time he was at the mercy of his landlord. Mr. Field begins by quoting Mr. Justice Campbell as admitting that doubts existed as to what constituted a khudkhast ryot and as to how the khudkhast tenure was acquired, whether by mere settlement or by some length of prescription. But he omits to tell us Mr. Campbell's own opinion, which is this (page 253 F. Bench Rulings):—

"Such being the laws, it may be conceded that from the time of the Permanent Settlement the zemindars have been free to make such arrangements and contracts as pleased them regarding all land in which no rights were held by ryots or others at the time of the settlement, or which at any time might lapse by the failure or abandonment of the ryots, subject only to this that a man once admitted on an ordinary khudkhast tenure without limitation of time could not be ejected or enhanced beyond the customary rates, except in certain cases by an auction purchaser." ………… "According to the ancient custom and present understanding between the parties, the new ryot who permanently settled in the village as a khudkhast or resident ryot acquired all the rights, privileges, and immunities accorded by usage to khudkhast ryots. The ryots so settled were protected in the first instance by law in case of sale, and after the passing of Regulation XI of 1822, they were in practice protected by habit and the interest of the purchaser, and resumed their former status. Of resident ryots only the few who may have come in under special contracts at variance with the custom, or whose tenures passed under the Sale Laws of 1841 and 1845, held on other than the customary terms."

Mr. Campbell held as strongly as I do that, though the Sale Laws or rather the readings put on those laws has introduced confusion, the great mass of the peasantry were practically khudkhasts and entitled to protection. He quotes from Holt Mackenzie's evidence given in 1832 to prove this position, the very passage I quoted in my speech last year in Council.

17. Next, Mr. Field quotes Mr. Justice Steer. I decline to waste time in discussing Mr. Steer's views of the law. A Judge who could say that it had always been a matter of doubt whether a right of occupancy was acquired by anything short of an occupation from a period prior to the Permanent Settlement shows such blank ignorance of the revenue history of the country as to be unfit even to enter the arena of discussion.

18. Mr. Field, who originally told the Commission that a ryot could never have been a khudkhast save by *long* prescriptive occupancy, is now disposed to say that this long prescription was only acquired in later times, *probably since* 1822. He quotes Mr. Justice Trevor, who, after stating that—" Khudkhast ryots are simply cultivators of the lands of their own village, who, after being once admitted into the village, have a right of occupancy so long as they pay the customary rents, and therefore with a tendency to become hereditary," went on to say that—

" When Regulation XI of 1822 was passed the use in section 32 of that law of the terms khudkhast and kudimi ryot, or resident and hereditary ryot with a prescriptive right of occupancy, to designate the cultivator who would not be liable to eviction on a sale for arrears of revenue, *gave rise to the doctrine* that khudkhast ryots who had their origin subsequent to the settlement were liable to eviction, though, if not evicted, they under section 33 could only be called upon to pay rents determined according to the law and usage of the country; and also that the possession of all ryots whose title commenced subsequent to the settlement was simply a permissive one, that is, one retained with the consent of the landlord."

19. It will be observed that Mr. Justice Trevor does not himself endorse the *doctrine* here set forth. He was right in his reticence, for the meaning and intention of that regulation was for other than some parts of its wording taken piece-meal would lead one to suppose. This is fully discussed in a letter from the Sudder Board, dated the 19th September 1834, printed in a volume of " Papers regarding the consequences to under-tenures of the sale of an estate for arrears of revenue, 1853." I cannot go into the point very fully here for want of time, but I may briefly say that the true construction of the regulation was admitted to be this. Section 30 only puts the auction purchaser in the shoes of the original engager, and enables him to cancel " *agreements* with ryots or the like settled subsequent to the settlement," subject only to such conditions of renewal as attached to the tenure at the time of settlement. Section 32 printed khudkhast, kudimi ryot, with a stop between the words. While section 33 says that auction purchasers were not entitled " in any respect to annul or diminish the title of *the ryots* to hold their land, subject to the payment of fixed rents or rents determinable by fixed rates according to the law and usages of the country." Accordingly the Board and Government held that after Regulation XI of 1822 " khudkhast *and* kudimi ryots could not be called on to pay a higher rent than was demandable by the former proprietor, and could not be ejected." The change made by Regulation XI of 1822 was, they said, this: that other ryots not khudkhast could be ejected and dispossessed without limit or condition;" whereas formerly they could only be enhanced summarily, and not dispossessed unless they refused to engage on the terms proposed under clause 5, section 29, Regulation VII of 1799.

20. Mr. Justice Trevor goes on to say that under Acts XII of 1841 and I of 1845 a purchaser was entitled to " enhance at discretion the rents of all under-tenants, and to eject all under-tenants with certain exceptions, among which are khudkhast kudimi but not simple khudkhast ryots." But here Mr. Trevor misquotes these laws, which protect, not " khudkhast kudimi" ryots only, but " khudkhast *or* kudimi" ryots having rights of occupancy at fixed rents, or at rents assessable according to fixed rules under the regulations in force.

21. Now, the Landholders Society, when the draft of Act XII of 1841 was under discussion, asked the Government to make it clear by a definite section that only khudkhast-kudimi ryots holding from before 1793 were meant to be protected, and that new khudkhasts were only tenants-at-will. This idea was, however, scouted by the Board and ignored by Government, and the changes made from time to time in the drafting of the section show to my mind that the ultimate intention of the Legislature was to protect any khudkhast ryot or kudimi ryot who, under the regulations hitherto in force, had a right of occupancy. No change was, in fact, intended to be made in the rights of *resident ryots*. There is no particle of evidence of any such intention, and in the absence of such, surely acknowledged pre-existent rights must be held to have been untouched, whatever *doctrines* the courts, in their ignorance of revenue terms and history, may have educed from the letter of the laws.

22. Mr. Field's next authority is Sir Barnes Peacock, who said he " did not believe" that even before the permanent settlement every resident cultivator necessarily became a khudkhast. I decline to accept that eminent Judge's " belief" as settling any point of revenue

history, or to pin my faith to his dissertations on the original meaning and derivation of the word "khudkhast." The directions to revenue officers quoted by Sir Barnes relate to the customs of the North-Western Provinces only.

23. Mr. Field, though quoting from the Great Rent Case so freely, does not tell us that Mr. Justice Seton-Karr, Mr. Justice Kemp, Mr. Justice Morgan, and Mr. Justice Norman, all expressed opinions more or less in favour of the theory that *time* was not of the essence of a khudkhast tenure. Mr. Norman said—"I do not think that the right of occupancy was formerly confined to those who had acquired such a right by prescription. It extended to all who had given unequivocal proof that they intended to remain at the place of their settlement, and who had been recognized as fixed residents of the locality, although their holding may have been of recent date. I agree in what I understand to be the opinion of other members of this Court, that length of time or ancient origin was not essential to his existence."

24. Mr. Field next tells us that *Mr. Shore* considered that the rights of the ryots depended upon *long* occupancy, but Mr. Field has only referred to the extracts from his Minutes in Harrington's Analysis; and he does not quote passages from Shore, even where reproduced by Harrington, where they do not seem to support his case. Thus, he quotes from page 267 of the extracts, but he ignores the following at page 252 :—

"There are two other distinctions of importance also with respect to the rights of the ryots. Those who cultivate the lands of the village to which they belong, either from length of occupancy *or other cause*, have a stronger right than others, and may in some measure be considered as hereditary tenants, and they generally pay the highest rents. *The other class* cultivate lands belonging to a village where they do not reside; *they* are considered tenants-all-will."

Here we observe that Mr. Shore gives what he considers an exhaustive division; that all ryots *not* pyekhast are khudkhast with a tendency (as it is elsewhere expressed) to become hereditary, and that length of occupancy is not essential to this tenure.

Mr. Field quotes page 281, but not page 272, where Mr. Shore says :—

"Pottahs to the khudkhast ryots, or those who cultivate the land of the village where they reside, are generally given without limitation of period, and express that they are to hold the lands paying the rents from year to year. Hence the right of occupancy originates......... I understand also that this right of occupancy is admitted to *extend* even to the heirs of those who enjoy it."

If this does not refer to *new* ryots, language has no significance.

The word 'prescription' used by Mr. Shore in the passage quoted by Mr. Field is shown by the context to refer, not to a period of time as essential to *create* the right, but to the *old usage* of the country which recognized occupancy rights as existing for all khudkhast ryots. The quotation from page 301, by the way, is from Mr. Harrington himself, and not from Mr. Shore, and the way in which Mr. Harrington used the term 'prescription' may be gathered from page 305, where Mr. Harrington writes—"I am of opinion no perpetual right of possession on condition of paying a fixed rent should at present be conferred on those ryots who have not already a *declared or prescriptive* title to such."

25. Again, while quoting from Harrington's Analysis reference should surely have been made to the note by Mr. Colebrooke (beginning at page 326 of the extracts), explaining *his* view of the ryot's position and the true intention of Regulation V of 1812 which was drafted by him. In that note Mr. Colebrooke shows that the regulation arrived at no more than doing away with collusive leases made in contemplation of attachment and sale. "If the tenant were in possession *during one or more anterior years*, no just suspicion can be admitted against his lease," said Mr. Colebrooke. He shows also that the old laws were meant to maintain under all circumstances the right of occupancy of the khudkhast ryot or resident cultivator; and set forth his view that "*the ryot* should be supported in his ancient and undoubted privilege of retaining the ground occupied by him so long as he pays the rent justly demandable," according to the usage. The "khudkhast ryot" (in the most general sense) was held by Mr. Colebrooke entitled to *demand* a renewal of his pottah at established rates: or where these were not clear, at rates payable for similar lands in the vicinity; or, in case of a general cancelment of leases, at the rates not exceeding the highest rate paid during any one of the three years preceding the cancelment. That the real scope and object of Regulations V of 1812 and XVIII of 1812 was grievously misunderstood, we know; but a careful study will convince any one that they did not make the great change in ryots' rights that has sometimes been supposed.

26. I have read through masses of documents on the question of the effects and intent of the Permanent Settlement and the rights of all classes interested in agriculture, and I find everywhere a general concurrence of opinion that by the customary law of India the actual cultivators of the soil, in the broadest sense of that term, were held entitled to protection and to be maintained in the peaceable occupation of their fields. Until very recent years no one ventured to say that a ryot was to be protected or not according as he could prove that his landlord's discretion was or was not barred by limitation.

27. There can be no better test of the true rights of the peasantry at each epoch in their history than the statement by the Government that makes the laws of what it conceived their position to be, or the evidence of revenue officers as to what they actually found existing. In this view I quote the following passages from the appendix to the Select Committee's Report of 1832. From Bengal Revenue letter of 7th October 1815 :—

"Although we have but too strong grounds to believe that the ryots are frequently subjected to exactions by zemindars and others, and although we unreservedly admit that the existing institutions of this country are very imperfectly calculated to afford to them in practice that protection to which on every ground they are so fully entitled, yet their rights, considering the subject abstractedly, do not appear to us by any means enveloped in that obscurity which might be supposed from the elaborate discussions which the subject has occasionally undergone. We consider it as a principle equally applicable to all the provinces immediately dependent on this presidency, and we believe we may safely add to the whole of India that the resident ryots have an established permanent hereditary right in the soil which they cultivate so long as they continue to pay the rent justly demandable from them with punctuality. We consider it equally a principle interwoven with the constitution of the different Governments of India that the quantum of rent is not to be determined by the arbitrary will of the zemindar, but that it is to be regulated by specific engagements contracted between the parties or their ancestors, or in the absence of such engagements by the established rates of the pergunnahs or other local divisions."

27 *(a)*. The Government letter goes on to condemn the Regulations of 1793 and 1803 and of 1812 for mixing up the pottahs of ryots with tenures of a different character.

27 *(b)*. I lay on the table a report by Mr. Sisson, the well-known Judge of Rungpore, on the condition of the ryots, dated the 2nd April 1815, as reprinted in volume 2 of Glazier's notes from the Rungpore records. This most valuable document was noticed by the Court of Directors in its Revenue letter of the 15th January 1819. I would beg a perusal of it. I will here only quote his remark on section 60, Regulation VIII of 1793, as it shows how he would have viewed the argument Mr. Field has based on that section. He says—

"It is imagined by many that this clause restricts the operation of the above clauses (sections 52, 54, 55) (and) of section 7, Regulation IV of 1794, to the khudkhast, or as they are sometimes called, chupperbund ryots; but this construction is clearly erroneous, the manifest intent being to exempt the khudkhast ryots under certain circumstances from the operations of the above rules. All ryots, pyekhast, as well as khudkhast, were held equally entitled to the benefits of a fixed nirikhbundi, though pyekhast ryots would not generally benefit by the privilege, since they would obtain, as an encouragement to till in a strange village, better terms than the rate which the khudkhast tenant would pay for land of the same quality."

27 *(c)*. The Directors' Revenue letter above quoted is an elaborate review of the good intentions of past Governments as to protecting the cultivators of the soil in their possessions subject only to fixed rates and the failure to give effect to such intentions in practice. They show how the law had from its obscurities been twisted to favour the discretionary powers of the zemindars as to ejectment and enhancement, and they repudiate that interpretation as erroneous, though natural. The whole mistake had arisen, they said, from treating the ryot's payments as *rent* instead of revenue, which had "introduced much confusion into the whole subject of landed tenures, and tended to the injury and destruction of the rights of the ryots."

27 *(d)*. In Revenue letter from Bengal of the 17th July 1818 the Government insisted that in pending settlements the ryots' rates must be fixed, that being the "prescriptive right possessed by the resident ryots."

27 *(e)*. In replying to this, the Directors, on 9th May 1821, said that if the Regulations of 1812 injured ryots' rights, they were no part of the Permanent Settlement, were revocable and ought not to be maintained. Government should fix, and from time to time revise in settlements, the rent or rather revenue payable by the ryots of all classes.

27 *(f)*. In Bengal Revenue letter of 1st August 1822 the Government says the "occupant ryots" had, by the custom of the country, rights even as against Government in respect of their rates—rights which could not be set aside without the imputation of injustice.

27 *(g)*. The Directors, on 10th November 1824, urged the Indian Government to adjust the rights and interests of the ryots in the Lower as well as the Upper Provinces as soon as possible on the principles of the despatches noticed above. Regulation IX of 1825 was meant to be a step in this direction, and if the policy of Government buying in every defaulting estate had been persevered in, some good might have come of it.

27 *(h)*. In 1826 Mr. Harrington drew up a regulation for maintaining the "rights of khudkhast, chupperbund, and other resident ryots who, by prescriptive usage, are entitled on certain conditions to the permanent occupancy of the lands cultivated by them within the limits of the village in which they reside." This regulation was opposed by Messrs. Leycester and Ross of the Sudder Dewanny Adalat on the ground that it would make all resident tenants without exception practically *istemrardars*, that this was going beyond the custom of the country, and would be bad for the ryots. In the minutes of these Judges is the only mention I can find of a period of prescription being necessary to establish a khudkhast right as a privileged tenure. They held that a zemindar could do as he liked till barred by limitation! The ryots fared badly in the courts of those days, and the effect of this opinion is overborne by the mass of opinions *per contra*. Mr. Harrington's measure is important chiefly as showing what a man of his experience conceived the rights of the ryots to be. Most revenue officers would have concurred with him, but the measure was dropped.

27 *(i)*. In the Resolution of Government of 1st August 1822 on the settlement of the North-Western Provinces, the possession throughout Lower and Upper Bengal by "the great body of resident ryots" of a "permanent right of occupancy" is fully recognized. It is admitted that the Permanent Settlement had failed to secure this sufficiently, but "as to the expediency of maintaining the tenures of the ryots or of allowing them to fall into the condition of tenants-at-will, the Governor General in Council could not view it as a question debateable.

27(*f*). I reproduce here the well-known passages from Holt Mackenzie's evidence in 1832—

"2569. Be good enough to begin with the lowest, and explain what you consider to be the actual rights of the cultivator, and so upwards to the zemindar?—In some instances, ordinarily when cultivation and residence are in separate villages, the tenure of the persons occupying land (the parcels held by individuals of all classes of occupants are in India generally small) seems to be nearly analogous to that of farmers in this country, the cultivator holding generally from year to year, without any fixed right of occupancy. And even in the case of such persons, the rules by which the rent is adjusted are subject to considerable variations. Sometimes the tenant pays a certain sum for a stated extent of land, varying sometimes according to the quality of the soil, sometimes according to the kind of the crop, and sometimes with reference to both, but being still defined as so much per beegah. In other cases he has to give a share of the produce or to pay a money compensation in lieu thereof. But these and other varieties which might be mentioned, although they determined the manner of adjusting the amount payable by the occupant, do not materially affect the nature of his right in the soil, which is that of a tenant holding after the expiration of the period for which he may have engaged, at the will of another.

"2570. Do you happen to know whether he is generally entitled to hold by the year?—I never heard of anything under a year.

"2571. Have they a right similar to that which prevails in England, that they can only be called upon to quit their farm at a known period of the year?—It is generally understood that the interval between getting in of the last crop of one year and the ploughing for the next is the time at which it is settled.

"2572. Is there anything similar to notices to quit that prevail in England?—I am not aware of any such form of notice being established. The class I now speak of usually reside in a different village from that to which the land belongs, and settle at the period of cultivation with the zemindar or his manager for the ensuing year. They have little or none of the local attachment which facilitates exaction from the fixed occupants, and though it may be expected to become every day more important to provide clearly for the rights of all classes, the necessity has as yet been little felt in the case of these non-resident cultivators. Generally, in regard to them it may be said that the zemindar is as anxious to have the tenant as the tenant is to have the land; and the adoption of measures to secure them from injury is not so much required as in the case of the resident cultivators who have fixed rights.

"2573. Do persons of all religious sects hold by the same tenure?—In respect to the nature of the interest enjoyed, the tenure does not appear to be influenced by caste or religious persuasion, but frequently the amount of rent is found to vary with the caste of the occupant.

"2574. Is it customary for proprietors to cultivate their own estates, or are they usually let?—Before answering that question, I should wish to explain what I mean by the word proprietor. The class I have now been describing may be considered to have no fixed right of occupancy, but the more general tenure in Bengal is that of cultivators possessing a fixed right of occupancy in the fields cultivated by them, or at their charge and risk, whom I should call proprietors of the fields to which the right attaches.

"2575. Describe the nature of their right.—They may be generally described as cultivators possessing a fixed hereditary right of occupancy in the fields cultivated by them, or at their risk and charge, their tenure being independent of any known contract, originating probably in the mere act of settlement and tillage; and the engagements between them and the zemindar, or (in the absence of a middleman) the Government officer, serving when any formal engagements are interchanged, not to create the holding, but to define the amount to be paid on account of it. They cannot justly be ousted so long as they pay the amount or value demandable from them, that being determined according to local usage; sometimes by fixed money rates or rates varying with the quality of the land or the nature of the crop grown; sometimes by the actual delivery of a fixed share of the grain produce; sometimes by an estimate and valuation of the same; sometimes by other rules; and what they so pay is in all cases distinctly regarded as the Government revenue or rent, whether assigned to an individual or not in none depending on the mere will and pleasure of another. There are varieties of right and obligation which one could fully explain only by a reference to individual cases, but this is my general conception of the rights of the class whom I should consider the proprietors of the fields they occupy. In Bengal Proper they are usually called khudkhast ryots (*i. e.*, ryots cultivating their own), and by this class of persons, I believe the greatest part of the lands in that province is occupied.

"2576. Do those persons still enjoy those rights? Are they protected in them?—I am afraid that generally the protection afforded them is very insufficient, but it varies in different districts. In the immediate vicinity of Calcutta, for instance, the old zemindars having been at one time excluded, and the revenue managed by an officer of the Company in the capacity of zemindar, a detailed measurement of the district was made and a record prepared, specifying the rates at which the rents of the ryots were to be adjusted, with a detail of their holdings, the settlement being in fact ryotwar. The arrangement continued after the restoration of the zemindars, in so far at least as concerned the essential rights of the tenantry, which were maintained, notwithstanding the intervention of those persons. The decennial settlement with the zemindars, of which the last year's demand became perpetual, was made upon a measurement, and with specific reference to the rents demandable from the cultivators; and those among them who obtained pottahs from the Collector or were recorded in the rent-roll as khudkhast ryots have been maintained, when the proof of the fact was forthcoming, in possession of their tenures, subject to the rent or revenue then settled, the zemindars having only the right of collecting what was so settled, and the tenure of those rights having in many cases become a property of considerable value.

"2577. What is the extent of the district over which this system has prevailed?—The district of the 24-pergunnahs yields to Government about £100,000. Its extent is, I think, about 6,000 square miles; but I cannot say what proportion is held by tenants of the description in question. In other places, too, for instance in the district of Dinagepore, though no detailed settlement preceded the decennial leases, I have understood that the rates payable for the different descriptions of land were adjusted upon such a principle as to leave the ryot a tenure of value, and that those rates have been maintained. Elsewhere in general, though the right be the same, the enforcement of it is difficult, and its value is uncertain for want of sufficient records, and I am not able to say how far practically the rates demandable are such as to leave the tenant a valuable tenure or not. In the majority of cases I should say the demand is so great as to leave it of little or no value."

Mr. Holt Mackenzie knew what we all know that the rights of the ryots had been in practice reduced to a minimum, but he held that it was the duty of Government, as he elsewhere put it, to "give to *every* person who *permanently* cultivates land, and whom it would be unjust to oust, a tenure in the fields occupied by him or tilled at his expense and risk, possessing a certain money value, and secure against arbitrary demands or illegal disturbance."

This is the cardinal principle that I desire to press upon the acceptance of the Commission. Now that the ryot's right has, by lapse of time and advancing prices, become generally a thing of real value, I can support no proposal which tends to confiscate this, or to limit it in an arbitrary and unconstitutional way.

27 (*k*). Coming down to 1852 we find Mr. Welby Jackson saying that "the tenants are chiefly comprised under two denominations, khudkhast or chupperbund, or resident ryots, cultivating land in the villages in which they reside, and pyekasht, or ryots cultivating in villages where they do not reside. The resident ryots hold by prescription and cannot legally be turned out until they have paid their rents. . . . . . . In the settlement of the North-Western Provinces hereditary occupation for two generations is admitted by the Government officers to give a claim to hold as resident cultivator: *but there is no such limit* in Bengal, and, in fact, it is very difficult for a resident ryot in Bengal to establish his right in court under the present practice. . . . . . . The zemindars prefer the non-residents whom they may treat as they please and subject to a racked rent without fear of opposition.

27 (*l*). In 1857 Mr. Sconce urged an explicit definition of the attributes of a *khudkhast*. The term imported, he said, a permanent village residence and a permanent occupancy of the jote. The tenure was one to become hereditary, but a ryot might be a khudkhast, though his grandfather had not been one. 'Permanent residence' (*i. e.*, evidently intention to reside permanently) originated the tenure and prolonged occupation "*confirmed* what residence originated."

28. I have already shown that the framers of Act X considered that *every resident ryot* had a right of occupancy, and that it was not intended to injure his position in any way. I have urged that this position has been injured by the 12 years' clause of that Act, and in this opinion I have the support of the majority of revenue officers throughout Bengal. It is no sufficient remedy to say that the new Bill will not infringe on any term of prescription recognized by local custom. We want an easy means of determining when a ryot may or may not be arbitrarily ejected. If it is impossible now-a-days to say that no 'resident' ryot shall be so ejected, because village residence and village tillage do not now run together, then I say take the spirit of the old law and protect *every* ryot, who gives reasonable proof of his intention to cultivate permanently the lands on which he is settled. Three years' tillage seems to afford such reasonable proof. This was the term proposed in the original draft of Act X as conferring rights of occupancy on resident ryots in lands not previously in their occupancy and for which they had no pottah.

29. I cannot admit the force of Mr. Field's objections to this. I do not see that such a provision would lead to litigation. On the contrary, it would prevent the litigation sure to arise if Mr. Field's proposal to leave everything to local custom is adopted. It would go far to do away with the erroneous idea that by occupying for 12 years a man is entitled to be charged a lower rent than his neighbour for the same class of land. It does not limit injuriously the zemindar's rights, for it simplifies their relations with their ryots, and puts the question of enhancement upon a uniform basis for the great mass of the ryots without distinction of class. It is desirable on political grounds, for it recognizes the title of the great body of the cultivators to the quiet possession of their fields. In so doing, and taken in connection with the proposal that the State should directly regulate enhancement, it widens the basis of agricultural prosperity, diminishes risks from famine, and tends to create a substantial tenant right without detracting from the value of that property which the zemindars have by prescription (though to a great extent in the teeth of law and justice) acquired, and of which it would now be folly to attempt to deprive them.

A. MACKENZIE.

The 20th January 1880.

Note by MR. HARRISON *on ejectment and enhancement, dated 23rd January 1880.*

THE vote taken to-day was to the effect that the occupancy right conferred by Act X of 1859 ought not to be reduced from 12 to 3 years. I was unable to vote for the reduction, because I could not accept Mr. Mackenzie's view that this right of occupancy confers no privilege, except against ejectment. Practically, so far as my experience goes, a ryot with an admitted right of occupancy is enabled to obtain more favourable rates than a ryot who has no such right. It *was* so in the opinion of Mr. Welby Jackson in 1852 (quoted by Mr. Mackenzie in his note of 20th January):—" The resident ryots hold by prescription and cannot legally be turned out; ... ... the zemindars prefer the non-residents, whom they may treat as they please, and subject to a racked rent, without fear of opposition;" and still more is it the case since the decision of rent suits was made over to the civil courts in 1869. The fact that one ryot can offer impediments to the enhancement of his rents, while the other cannot, pactically secures him a more favourable rate. Moreover, it will infallibly continue to do so if the classification proposed by Mr. Mackenzie is adopted. If we class all ryots who have not cultivated for three years as tenants liable to be enhanced and ejected at will, and all who have cultivated for three years as not liable to ejectment or enhancement, except by suit in the civil court or before the Collector, it will follow that in all amicable adjustments, which, it is to be hoped, will far exceed the number of cases settled by suits in court, the latter will be able to insist on better terms, and will obtain them; and if, in settlements by the Collector, better terms are not given, we shall have a divergence between the law as it works itself without the agency of the courts, and the law as worked by the courts, which cannot but cause inconvenience.

It is my conviction that the occupancy right is more valuable than Mr. Mackenzie admits; that it will continue to be so; and that, if we are to legislate wisely, we shall legislate on that assumption.

The question, then, remains, whether anything *ought* to be, and whether anything *can* be, done to give some further security to actual cultivators who have no right of occupancy. As regards the " ought ", it seems to me that Mr. O'Kinealy and Mr. Mackenzie have gone far to prove that it was not the intention of the framers of Act X to relegate all ryots who could not establish a right of occupancy, or prove some local custom in their favour, to the position of mere tenants-at-will. Enhanced at will they cannot be, but ejected at will they can be, according to present case law on the subject. This distinction is obviously an inconsistent and untenable one, as a landlord who can eject a ryot at will can obviously arrange to take from him any enhanced rent he pleases, as a condition of his retaining the land. The framers of Act X appear to have designedly left the matter in uncertainty, intending to entrust the protection of each individual ryot against ejectment to the courts' view in each case of prescription, custom, and the general regulations. Similarly, as regards enhancement, such ryots were not to have the benefit of only being enhanced on proof of one of the specified grounds, but might be enhanced to such an extent as might appear to the court to be fair and equitable,—the decision of which question manifestly included the implicit decision in each case of the extent of the respective proprietary interests of the rent-payer and rent-receiver in the soil.

It seems to me patent on the face of it that the law could not be worked successfully on such a footing as this, and if the High Court cut the Gordian knot by practically placing ryots of this class in the position of tenants-at-will it need cause no surprise.

More than 20 years have since passed, and there can be very few ryots or descendants of the ryots of 1859 now cultivating the land who have not either acquired a right of occupancy, or consented to some arrangement of the zemindar which has practically converted them into new ryots. I, therefore, consider that we are equitably at liberty to consider the general interests of the country and of agriculture. If I thought that the interests of agriculture would be best served by giving no protection whatsoever to the cultivator who had not acquired a right of occupancy, I do not think there would be many individuals now cultivating the soil who would be unjustly affected by our withholding all protection other than what tenants-at-will have in England, especially when it is remembered that special customs are to be saved. But I am clearly of opinion that in India it is decidedly in the public interests to give as much security to the actual cultivator, where there is no right of occupancy, as shall not be a serious hindrance to a landlord getting into his own possession any land which he particularly needs, or getting rid of any particular tenant who is a thorn in his side. On the other hand, looking to the laws (though not the practice) before Act X of 1857, and to the intentions of the framers of that Act, I do not think the landlords have any right to complain of the action of the Legislature to this extent, and therefore, if possible, it ought to be done.

The further question remains—*Can* it be done? The first objection which has been raised is that we shall be thereby multiplying distinctions. I must say that this objection seems to come with little reason from any one who holds that Act X intended to protect against ejectment and arbitrary enhancement all resident ryots. Act X certainly gave a definite form of protection to ryots who could prove 12 years' occupancy. If it also reserved some *other* kind of protection (for clearly it was not identical) to all resident or all khudkasht ryots, it evidently recognized a kind of sub-occupancy class; and if we endeavour to find some practical substitute for the protection conferred on this class, we cannot be said to create any further distinctions, but only to recognize those which already exist.

I designedly use the words " practical substitute ", as I think it evident that it is hopeless to attempt to *define* now that which the framers of Act X found it necessary to leave undefined; and still more, that it is most impolitic to leave these rights to be decided in each case by the courts of law, and so to force litigation on persons who would avoid it if they could—litigation, too, in its most objectionable form, owing to the haziness of the grounds on which a decision must be arrived at. I may add that not only does it seem hopeless, but also that I feel little temptation to wish to try to define the rights of the *cultivator* in strict conformity with those of the khudkasht under the old Regulations. Some of the notes that have been laid before us (which seem to me fully to have elucidated the correct bearing and drift of the Regulations) virtually proceed on the assumption that, in legislating for the *landlords* and *cultivators* of the present day, we are legislating for the true descendants and successors of the *zemindars* and *ryots* of 1793. Such an assumption, especially outside Behar, appears to be very wide of the mark. By the process of sub-infeudation on the one hand and sub-letting on the other, the old lines between zemindars and ryots have become so far disfigured, if not obliterated, that any protection we may now in 1880 give to the actual cultivator will, in the majority of cases, be given *against* the real successor to the ryot of 1793, and not in his favour. By far the majority of persons who are the successors to the khudkasht of 1793, have either long since sub-let and converted themselves into middlemen, or yielded to the power of the zemindar and abandoned altogether the vilage, and perhaps the district, in which they were then resident. Whether they have been treated unjustly or not, we cannot now undo the work of the last 80 years. We cannot discover the descendants of these ryots and replace them in their ancestral holdings. While the present landlords, against whom we propose to rehabilitate these rights, are in nine cases out of ten tenure-holders who are either the original khudkashts and their successors, who, as the value of produce has increased, have converted themselves into middlemen by sub-letting, or are persons who have bought their tenures with reference to the rent-roll at the date of their purchase.

I propose, then, to find the best substitute for the vague rights which Act X left undetermined, and, to make it workable, it should be a self-acting check upon capricious ejectment, which at the same time will not enable its holders to defy the landlord, and will not render a recourse to a lawsuit necessary in any case to enable the parties to know their rights and liabilities.

As complying with these conditions, *firstly*, I would take Mr. Mackenzie's period of three years as a fair limit, below which we must leave the tenant to be entirely a tenant-at-will.

Secondly, I would attach the privilege to the actual cultivator (so defined as to be most nearly equivalent to the person at whose risk the crop is grown), as I think that he is the person who in the public interests it is most expedient to protect.

Act XVIII, 1873, Sections 21, 36, 39.

Thirdly, I would protect him against capricious ejectment, by only allowing him to be ejected on non-payment of the rent agreed upon between him and his landlord. This is the law in the North-Western Provinces. If the ryot does not agree to the landlord's terms, it is evident that the landlord can proceed to eject him with the aid of the court; but whether he will, as a matter of course, succeed, is not made clear. To leave this uncertain is to leave the whole question in confusion. The best self-acting solution which occurs to me is, to allow the landlord, by notice duly served, to claim what rent he pleases; but if the cultivator does not accept it, to give him some compensation, and so to arrange that the compensation shall increase in proportion to the exorbitance of the landlord's demand. Therefore—

Fourthly, I would say that the landlord may not raise the rent above that paid for the previous year without due notice, and, on his serving such notice, specifying the rent he claims, the cultivator shall be required either to pay this rent, unless he effects an amicable compromise, as he usually will do, or take as compensation an amount which shall vary with the rent *demanded*.

Fifthly, I think *one* year's rent would be sufficient compensation, as it is not a year's rent at the old rate, but rent at a rate which, *ex hypothesi*, is so exorbitant that the cultivator cannot afford to pay it. Moreover, if, as I believe to be the case, landlords have usually been able to eject such ryots without any compensation, it would not be fair to fix any amount which would be prohibitory; but the principle of the proposal would be equally preserved if two or three years of this rent are given.

Sixthly, If the cultivator elects to take compensation, and the landlord does not pay it before a certain date, the former should be entitled to continue to hold the land at the previous rate.

It may be said that this will enable the landlord to rack-rent all cultivators without a right of occupancy. Practically, I do not think it will do so. The necessity of serving a notice through the court, and the risk of having to pay compensation at the rate of rent demanded, as well as the advantage of retaining all old cultivators who pay their rents without obstructiveness, will be sure to obtain somewhat favourable terms for the three years' cultivators. Though it is an object to secure a simple workable machinery for landlords and cultivators who do go to court, it is still more an object to provide such a clear indication of what the parties will be able to obtain if they have recourse to law, that they will in 99 cases out of 100 amicably adjust their differences on this basis.

Moreover, even if the landlord can thereby obtain what is nearly a rack-rent, all who attach such great weight to what it was intended to do as regards rent in 1793 should bear in mind that there is every reason to suppose that the pergunnah rates or prevailing rates of that day were practically rack-rents, that is, they were the maximum rents which the ryots could afford to pay, which is the only tangible test of a rack-rent. All the evidence that comes before us in re-settlements tends to show that the rates determined at the old settlements left relatively and absolutely far less to the cultivators than those which they now repudiate as excessive. When the old customary rents payable in kind still remain, we can see from their incidence in the present day how little they could have left to the cultivators. I am convinced that if all the evidence were accumulated—the rates so far as known at that time, prices so far as known, the relative absence of sub-letting, the testimony of contemporaries—a very strong case could be made out for the contention that the then pergunnah rates were in most places as high as the cultivators could afford to pay. Mr. Mackenzie seems to share this view, as he considers that it is only now by lapse of time and advancing prices that the ryot's right has become generally a thing of real value. Certainly Lord Cornwallis speaks confidently to this effect in the correspondence with Sir J. Shore quoted by Mr. O'Kinealy:—"Whoever cultivates the land, the zemindar can receive no more than the established rent, *which in most places is fully equal to what the cultivators can afford to pay.* To permit him to dispossess one cultivator for the sole purpose of giving the land to another would be vesting him with a power to commit a wanton act of oppression *from which he could derive no benefit.*" Here the whole argument against the right of arbitrary ejectment is made to turn upon the assumption that the standard rents were rack-rents.

Paragraph 27 (j).

It will also be observed in Mr. Mackenzie's long quotation from Mr. Holt Mackenzie's evidence in 1832 that this officer shared the same view. He thought that in the 24-pergunnahs and Dinagepore the rents were adjusted at the Permanent Settlement so as to leave the ryots a tenure of value. Of other districts he is unable to speak with confidence, but he would say that "the demand is so great as to leave it of little or no value."

Mr. Mackenzie contends that the intention of the Government of that day was not to allow the zemindars any right of enhancement except by inducing the ryots to cultivate more valuable articles of produce or by clearing waste lands. Mr. O'Kinealy, on the other hand, emphatically conceded the right of enhancement at the last meeting, though, as that part of his note which deals with enhancement has not yet been circulated, I cannot say under what limits he would admit of the right as a prescriptive one. Practically, however, before 1793 rates were so adjusted that the standard rents were almost universally rack-rents. Practically, since 1793 and up to 1859, the landlords have been able to enhance up to the maximum the ryots have been able to afford. Since 1859 they have been able to do so in the case of all ryots who have not been able to prove a right of occupancy. In the interval between 1793 and 1880 the process of disintegration of estates and ryot's holdings has been so rapid that the present cultivators, without a right of occupancy, who are successors or in true sense representatives of the ryots of 1793, must be very few indeed. It seems no fair objection, therefore, to my proposal that the barrier which it will set up against rack-rents will be but a slight one.

It is a question whether the privilege should be conceded to existing cultivators holding under leases for a definite term, when their tenancy was created by the lease and did precede it. This, however, is a matter of detail.

With the permission of the President, therefore, I will bring forward a proposal based on the above principles for discussion at the meeting on Tuesday, the 27th.

H. L. HARRISON.

Note on sub-letting by MR. HARRISON, *dated 6th March 1880.*

THE vote taken on Friday last, the 20th ultimo, was in favour of the distinct authorization of the sub-letting of the occupancy right and of vesting in the sub-lessee after three years a subordinate right of occupancy. The wording of the proposition as recorded in Mr. Field's notes is given in the margin.

That a ryot having a right of occupancy when this Act comes into force shall be allowed to sub-let his land, but the rent payable by the sub-ryot shall not in any case be more than 10 per cent. above the rent payable by such ryot to such ryot's landlord.

No existing ryot shall be entitled to claim abatement under this rule of rent paid at the time the Act comes into force, but every such sub-ryot who has held for three years shall be protected against arbitrary ejectment so long as he pays such rent, *i.e.*, ejectment by his lessor.

2. To that proposition Mr. Field and I were the only dissentients; and as I think it to be (1) impracticable in itself, (2) entirely contrary to the legitimate objects of the occupancy right, (3) the definite sanctioning of a principle which will impress an entirely wrong character on the new Bill, making it unjust to the zemindars without eventually benefiting the actual cultivators, I ask leave (as I shall have no opportunity of taking any further part in the discussions) to record at some length why I regard the vote as so erroneous.

3. (1).—The proposition is impracticable. It does not in any way fulfil its avowed object of recognizing the right to sub-let as already inherent in occupancy tenants. I must admit that I regard this right with very little tenderness. I look upon it as an abuse of the occupancy right from the outset, though legal because not prohibited. I would have no hesitation, therefore, in taking it away when it has not been exercised, or only exercised for a very short time insufficient to create any equitable rights in the sub-lessee, and when it has been exercised for a long period I would convert the lessor into a middleman with a right to whatever profits he can prove his title to; but how can those who consider this right more sacred and speak of stopping sub-letting as confiscation, justify the limitation of the profits to 10 per cent.? They surely must be aware that in many, I would say most, cases the lessors derive more than this profit. Why is the surplus to be *confiscated?* The protection of the lessors against existing sub-lessees claiming a reduction is transparently futile. Will it be possible for those occupancy tenants who now make 50, 100, 200, and in some cases 500 per cent. to retain

their sub-tenants when these latter come to know that they have only to throw up their holdings in order to force the superior tenant to re-let them for a profit of 10 per cent. In many cases he will be a man with no idea of cultivating himself—not improbably non-resident, and following some other calling. Will these men thank you for being so scrupulously careful not to confiscate their rights of sub-letting?

4. But look into the matter a little further. We have, first, a large number of ryots with rights to hold at fixed rents, it is not proposed to limit their profit on sub-leases to 10 per cent. Next we have those who have acquired a right of occupancy at the time the new Act comes into force. These are the classes referred to in the proposition. Thirdly, we have those who may acquire the right hereafter to whom the proposition does not apply. The question was immediately raised whether the same right should be conceded to them also. The chief authors of the proposition voted that it should. I expressly voted the same way on the ground that it would only add to the confusion to create further distinctions. Mr. Dampier, however, voted the other way, and when I saw that my vote was likely to be an important factor in settling the question, I asked leave to withdraw it and abstain from voting on the ground that, as I was altogether opposed to the principle, I ought not to have a dominant voice regulating its application. The President refused to allow me to recall my vote, hence I believe it was carried to extend the right to persons acquiring in future the right of occupancy.

5. A resolution thus arrived at cannot be entitled to much weight, so it will be better to point out how under *either* alternative the project will not work. It is needless to say nowhere is any accurate record kept of the dates on which ryots pass from one class to another. An occupancy ryot who can prove that his rent has not varied for 19 years will probably be a ryot entitled to hold at fixed rates the following year if his zemindar leaves him unmolested; but not for certain.

His right to sub-let for more than 10 per cent. cannot be known till it is known whether the court will believe his evidence or may believe some evidence which the zemindar may have or may even fabricate showing a prior change in the rent. Without a suit, therefore, between the zemindar and occupancy ryot, it is quite impossible to say what ryots belong to the class entitled to hold at fixed rates or have a mere occupancy right. Again (say) in the year 1885 a ryot has a right of occupancy; no one cares to question it, but it is a very different matter to know whether he had acquired it by 1881 or not. The point could not probably be determined without a suit between landlord and tenant, and the issue of it would then be very doubtful.

6. This being the state of things, how would the rule work in the case which, I am sure, would be a very common one, under an Act framed, as Mr. Mackenzie and Mr. O'Kinealy would frame this draft Bill, of a ryot holding land at a rental of Re. 1 (say) per beegha, which in the open market would fetch a rent of Rs. 2, 3, or 4 per beegha? Numbers of needy cultivators are prepared to offer the ryot Rs. 2-8, and he defies your law and sub-lets to some of the least insolvent of these. What is the proposed sanction to the rule, forfeiture to the zemindar? Against this Mr. O'Kinealy and Mr. Mackenzie protest most emphatically—Inability to sue? In that case if he wishes absolutely to defy you he has only to change his sub-tenants at the end of every second year, and to require the rent to be paid in advance. Even if he does not require the rent to be paid in advance, he will find numbers of cultivators who will pay him without suit, knowing that they would be ejected if they did not. But supposing even the superior ryot does let the cultivator hold on for four years, and the latter then turns round upon his lessor and declines to pay more than Re. 1-1-7 per beegha, what is to be the effect of this plea in answer to a suit for arrears? Is the holding for three years at Rs. 2-8 *per beegha* to entitle to such right of occupancy to hold at Re. 1-1-7? I see no equity or morality in this. The sub-lessee has been a partner to the illegality as much as the sub-lessor; but say that on grounds of public policy you prescribe that the sub-lessee shall have this resource, he will still never venture to exercise it. The answer at once will be I am a tenant entitled to hold at fixed rates. In time probably an admission to this effect would be taken from the sub-lessees before they were let into the land. But even if no admission be taken, how is the rejoinder to be met? Is the sub-tenant to be allowed to contest the claim by calling on the superior tenant to produce his evidence of 20 years' fixed payments, and if this evidence is forthcoming, is the sub-lessee to have the landlord's right of producing rebutting evidence of a prior change of rent? In fact is every suit for arrears of rent between sub-lessor and sub-lessee to be the occasion for trying the sub-lessor's right to hold at fixed rent? Without this, in the case supposed, it will be utterly impossible to determine whether the sub-lessee at the end of three years will acquire a right to hold at Re. 1-1-7 per beegha, or will get no rights before the end of 12 years, and even then only an occupancy right to hold at the Rs. 2-8 per beegha.

7. But the difficulties do not end here. Owing to the anomalous working of the 20 years' presumption rule the confusion will be endless. After five years (say) the sub-lessor wishes to eject his sub-lessee, the latter pleads his sub-occupancy right. The plaintiff in reply says that he belongs to the class of tenants entitled to hold at fixed rates, and therefore the right has not accrued. Even if the court require him to prove his claim he has sufficiently discharged the onus by producing evidence of 20 years' unchanged payments, but the sub-lessee will reply that he acquired his sub-occupancy right two years before. Is the sub-lessor to prove 22 years' unchanged payments, or is the subsequent evidence of the last two years to operate to take away the sub-occupancy right which must have been decreed had the suit for ejectment been brought two years earlier? Or, again, may the sub-tenant put the landlord into court to rebut the claim? If so, if the landlord states, as he probably would, that he

too poor to spend anything on the soil, to tide over a bad season, to keep out of debt, or be in any way self-reliant and independent.

13. We have Mr. Harrington's authority for saying that this had already happened in Burdwan by 1810. In his minute, when leaving India in 1827, he writes that he has the best authority, that of his colleague Mr. Bayley, for saying in 1810 that the ryot in Burdwan "certainly now can scarcely support himself, almost every peasant is shackled with debt and harassed with the payment of rent which appears excessive with reference to his net profits;" and Mr. Bayley adds "this is chiefly ascribable to the introduction of the putnee system under which there are three, four, or even five and sometimes more links in the chain of intermediate tenantry between the landlord and the cultivators, and each of these middlemen looks of course for some profit, which ultimately falls upon the ryots." My own experience, so far as it is worth anything, certainly goes to show that the utmost rack-renting is to be found when the ryot's tenure falls into the hands of mahajuns or other persons who do not cultivate themselves, but sub-let to korfa ryots. This is the system to which Mr. Mackenzie and Mr. O'Kinealy would finally and definitely attach the seal of legislative sanction, for the percentage rule will infallibly break down, as will any barrier to sub-letting which does not eventually, if persevered in, result in the forfeiture of the occupancy rights.

14. When Act X of 1859 was passed, the evils of sub-letting were not brought prominently forward, and the Legislature avoided all the difficulties of the question by simply refusing the sub-lessee the acquisition of the occupancy right. In this, a point which attracted no attention, it went directly against the principles of the Permanent Settlement, which recognized as much right of occupancy in the cultivator under a khudkasht (were such possible) as in the cultivator under a zemindar. Mr. O'Kinealy also in his note (page 33) indicates his marked disapproval of any idea of a khudkasht ryot, if he becomes a zemindar, being placed in a better position than any other person; but this he evidently is by Act X, as his lessee does not acquire the same rights as a lessee under the zemindar.

15. It comes therefore to this—the Permanent Settlement recognizes the occupancy right in the resident cultivator. Act X recognizes it in some one else who may be the actual cultivator or may not. While it refuses it to the actual cultivator, if his lessor happens to be an old ryot and not a zemindar. We are now placed in this dilemma, either we must perpetuate this injustice which slipped in as it were by a side wind, and draw this invidious distinction between a cultivator who rents land from a ryot having a right of occupancy and from a zemindar direct, or we must create a second occupancy right in the same land, also an unheard of innovation, or we must go back to the principles of the Permanent Settlement and prevent any future sub-letting of the occupancy right; while at the same time we convert into middlemen (as they already are in effect) all who have regularly committed themselves to sub-letting. Under any circumstances the latter course seems the fairest, and considering that it is the only course consistent with public policy and the future improvement of our land system, I think it will be a most fatal mistake to draft the Bill on any other foundation.

16. (3).—I now proceed to the last and the most important point, *viz.*, that to adopt the principle of sub-letting is to impress an entirely wrong character on the new Bill, making it unjust to the zemindars without eventually benefiting the actual cultivators.

17. This is a most important question, and I must ask permission to go into it at some length. Let me begin by explaining what it is which I am desirous of showing. My own conviction is that whatever the good intentions of the framers of the Permanent Settlement may have been, what they actually did confer upon the ryot was worthless. Mr. N. J. Halhed, writing on behalf of the ryots in 1832, and advocating their protection, says—"In point of *law* and fact the ryot can claim under the provisions of Lord Cornwallis' Code no rights at all, for the few privileges he may enjoy he is indebted entirely to the forbearance or to the fears of his taskmaster, the zemindar." This was the actual result of the Permanent Settlement, it was the result which Mr. Shore by anticipation declared to be its legitimate consequence, and with our present knowledge it is easy to see that this must have been its necessary result. The zemindars may have often acted most illegally and overridden the law, but this was quite necessary, they had only to exercise their legal powers and the privileges of the ryot were valueless. Mr. O'Kinealy and Mr. Mackenzie, however, who have now carried the provision authorizing sub-letting, have also written notes giving us their views at length on the relations between the zemindars and ryots under Lord Cornwallis' Code; and they give an altogether different colouring to its fundamental provisions about the pergunnah rates. They consider that, both by the letter and spirit of the Code, the ryots were given an extremely valuable privilege, amounting, I believe, to an appropriation of fully 50 per cent. of the proprietary interest. In short, they contend that if we now leave the great bulk of the ryots in possession of any valuable tenures held at very far below market rates, we shall only be giving effect to the laws of 1793.

18. I make these allegations in no acrimonious spirit. I have no doubt that they as sincerely think this will be for the benefit of the country as I think it will be to the contrary, and looking to their great ability and knowledge I am far from assuming that they may not after all be right; but I am satisfied that I am doing a good service in analysing the question and showing what it really leads to, who the people are that it will benefit, and who it will injure; in making it clear at the outset what the privilege of sub-letting the occupancy right virtually amounts to, and why it is the hinge on which the entire value of the rent law to the zemindars turns.

19. Briefly the question all depends on this, as Mr. O'Kinealy, I know very well, sees. The pergunnah rates of 1793 were customary rates paid by *cultivators*, and I have no doubt

though he and Mr. Mackenzie will perhaps not admit it, that they were practically determined by the market value of the land. If the occupancy ryots are now allowed to sub-let, the rates paid by their *korfas* will be the real customary rates of the present day corresponding with the permanent rates of 1793; but the ryots with the right of occupancy will be treated as ryots of a different class whose rents are therefore not to be compared with those of the actual cultivator. With what then will they be compared? With one another? How will that enable the landlord to raise them if they are all unfairly and inequitably low to start with? By the rise in the price of produce? This is a most perfectly fair ground to both sides when you have once obtained a fair starting point as a fulcrum, and if the rents payable in 1790, 1800, 1810, or any other period up to the passing of Act X of 1859 could be clearly ascertained, and an increase given proportioned to the rise in the price of produce since the date of the comparison, this rule would give the landlord fully as much as is desirable. But during the last ten years or so the intention of Act X has been practically made a dead letter. Somehow or other the civil courts have not seen their way to decreeing the proportionate enhancement to which the landlords were entitled. Everybody knows that the value of produce has enormously increased, that ryots are paying their rents with only a fraction of the produce with which they formerly paid it, but the civil courts, deciding each case according to the laws of evidence, have not seen it, and the intention of the Legislature has been defeated. There is great danger, therefore, that by the time clear evidence of the increase of prices has been obtained, and the new law is in full operation, the period with which the comparison will have practically to be made will be a period when rents were already abnormally depressed; and the rule of proportionate increase in prices contains in itself nothing to correct this false standard once adopted.

20. Observe now the ruinous effects (according to my view of the case) of allowing sub-letting. In large tracts of country, especially Behar, Act X has scarcely yet penetrated the surface of the rent system. Landlords have therefore been able to secure fully as much, often more than a full rent. And I quite admit that we have to do our best to raise the position of the ryot in that province where he is still usually the actual cultivator. But in parts of Bengal where, owing to the difficulties placed in their way by the civil courts, the zemindars have been held at arm's length by the occupancy ryot, he has in many cases secured a tenure at a quit rent. In these parts sub-letting has been taking place at a very rapid rate, and will in future progress still more rapidly; and the sub-lessee has been paying the fair and equitable rent which the law intended that the occupancy ryot should pay.

21. Hence, if the actual cultivator is to be regarded as possessed of the occupancy rights, we get as a general standard a fair rent to start with, more, as is well known, than I would wish, as I would openly give the occupancy tenant some advantage over a tenant-at-will; but it would be a clear definite privilege given with our eyes open, and then it would cease. If the land could afford to pay Rs. 20 rent, he would be entitled to have it at Rs. 15, 16, 17-8, or whatever might be considered the fairest proportion. The other system would *ostensibly* give him no privileged rate at all; but by keeping the actual cultivators out of view, would enable him to hold land which could afford to pay Rs. 20, at Rs. 6, 8, 10, 12; but in some cases when there has been a strong and oppressive zemindar who has drilled the ryots into subjection and kept up the rates, it would give the full Rs. 20. Thus, it would be most unequal in its operation benefiting most those zemindars who least deserve consideration, and injuring those most who have been least oppressive and rigorous.

22. Still it would not matter so much if this boon passed into the hands of the real cultivators of the soil. The moderate and definite advantage which I would give would go to the actual cultivators, and to no one else. I would make sub-letting, save under certain exceptional circumstances, entail the forfeiture of the occupancy right; but by authorizing sub-letting, the benefit will all pass over to a virtual middleman, who will rack-rent the actual cultivator as he pleases. I assume, of course, that the endeavour to limit him to 10 per cent. will be a dead letter. Thus the actual cultivator will not gain, while the landlord will be a serious loser. A class of middlemen, whom I consider of no great merit, and who will be altogether abusing the intentions of the occupancy right, will be the gainers.

23. I must now justify the above outline as being a correct description of the two sides of the question, and show where Mr. Mackenzie and Mr. O'Kinealy seem to me to call upon us to make unwarranted inferences as regards the spirit and letter of the permanent settlement in regard to the position of the ryots.

24. I will take Mr. Mackenzie's notes first.

I see nothing to object to in his contention in his first note of 6th January that Act X of 1859 was not intended to effect any radical change in the rights and status of the cultivating classes, and that ryots cultivating for less than 12 years have suffered some injury. I think this last allegation is open to reasonable question, but I would adopt Mr. Mackenzie's view. I see no great objection, therefore, to his proposal for a three years' occupancy right, except that I think it ought to be met by counter-concessions when the law has proved in its practical working to have unfairly injured the zemindars.

25. I also admit that the zemindar had not an unlimited power of enhancement, that he could only claim the rent demandable from the holders of tenures in existence at the time of the Permanent Settlement. It is, I think, an open question whether his powers were not greater as regards the cultivators of new lands brought under cultivation after the Permanent Settlement, and as regards lands abandoned or relinquished in his favor after that date. This, however, I regard as of little importance, as the standard

My own view is that, under the law and custom of Bengal, no zemindar is entitled to rack-rent *any* cultivator admitted to settlement in the village lands. On his demesne lands (his khamar, nij-jote or seer lands) he can ask what rates he likes, but on the village lands the rates should be uniwas, except perhaps in Dinagepore and the 24-Pergunnahs, so vague as to be practically no standard at all, and usually it was so high that very few ryots could avail themselves of it. Then comes the part of Mr. Mackenzie's note which, I submit, mistakes the case. I extract it in the margin.

form, customary, and fair, and such as to *divide* equitably between the zemindar and the cultivator *in accordance with the custom that may have established itself in the village* the net profits of cultivation, after defraying all out-goings and the actual cultivator's wages (para. 11.)

26. The doctrine is ingeniously stated, because the great fallacy (as I regard it) is slipped in among a number of statements which are quite correct. No doubt a zemindar could only claim customary rates, but what if these customary or pergunnah rates involved rack-renting?

To say A cannot rack-rent B, but he can claim a customary rate which practically is a rack-rent, is a distinction without a difference. Let us drop the use of the word "rack-rent," which sometimes means an excessive rent, sometimes merely the full market rent, which leaves the cultivator the cultivator's profit only, and not part of the proprietary profit also; now I certainly have no objection to *give* the cultivator, at least the cultivator with a right of occupancy, some share in the proprietary profit; but I am quite satisfied that it is altogether incorrect to say that any such share was left him by the customary rates prevailing at the time of the Permanet Settlement (except in Dinagepore and the 24-Pergunnahs). I am afraid these rates rack-rented the cultivator in the worst sense;* but at any rate they left him no more than the bare cultivators' remuneration. The State took the rest, abandoning one-tenth of its shares to the zemindars, and, by the Permanent Settlement, the State made over its share for a contract sum to the zemindars. Mr. O'Kinealy questions this: but I will return to that hereafter.

27. Mr. Mackenzie freely admits that he would allow the landlord to share in the rise in prices; but in the same note he proposes to limit the comparison to twelve years, that is, by the time this Bill may become law the comparison will be limited to the period during which the zemindar has practically found himself "powerless to enhance the rent of the individual cultivators." It is in this that I consider he does the zemindars such an injustice under the plea of following the old lines. Those old lines empowered the zemindars to obtain the full market-rent of the land, leaving the occupancy cultivators the *cultivators'* share only. Mr. Mackenzie would so manipulate the law as altogether to turn the tables upon the zemindars, and enable them to obtain something very far short of the full market rate, while all the time protesting that he is giving the occupancy ryot no privileged rates whatsoever.

28. Mr. Field in his note in reply, dated 13th January, gave reasons to show that it was at least open to considerable doubt whether Mr. Mackenzie was not unduly extending the area of ryots entitled to the right of occupancy. In that note I would generally concur, though it does not deal to any great extent with the question which I wish to bring prominently to notice. Mr. Mackenzie in his rejoinder of the 20th January mainly devotes himself to contraverting Mr. Field's view; but he adds some important links to the argument, which it is necessary to refer to:—

"My argument in its complete shape was not merely that before Act X of 1859 no landlord was legally entitled to raise the rents of any village ryots above the pergunnah or customary rates, but further that the landlord had no legal means given him of effecting, by anything he could do, the raising of that pergunnah rate itself. He had to take it as he found it, 'what it was' being supposed to be a problem of fact to be solved by local enquiry. We know of course that practically it could not be so discovered; but the Legislature did not fully and unreservedly recognize that truth till 1859. We know also that landlords did arbitrarily raise rents from the Permanent Settlement up to 1859. My position is that their right to do so had no legal or constitutional basis, though I am ready now to except under proper legal restrictions the custom they have succeeded in establishing."

29. This argument is, as I shall show, fully endorsed by Mr. O'Kinealy, and I quote it with the fullest respect. If admitted, it is a complete answer to my contention that rates in 1793 involved full market rents, if not, something more. No doubt the *money* rents thus deduced at that time would be only quit-rents now; if then the zemindars could never increase the *money* rents then demandable, occupancy ryots would be entitled to hold now in 1880 at the same rents as they would have been entitled to hold in 1793, and those rents would no doubt be fully as low as Mr. Mackenzie and Mr. O'Kinealy would place them.

30. That Mr. Mackenzie does mean that it is the *money* rent, and not merely his customary *share of the produce* which the zemindar could not raise, is evident from paragraphs 11 and 12 of his note of the 20th January, where he will not admit Mr. Field's view that those were rules for *commuting the State share of the annual produce into money rents!* He sees plainly that his argument turns to dust in his hands if the pergunnah rates fluctuated with produce.

31. Mr. O'Kinealy does not appear to see the importance of this distinction as clearly as Mr. Mackenzie, as he in several places quotes the rule of produce as if it supported, instead of weakened, his case. He argues out the question at great length in his note with a copy of which, in an incomplete state, he has favoured me; but he presents the vulnerable points of the argument in much greater prominence. Thus, he says, p. 20:—"The nature and amount of the customary dues require some consideration. *They could no doubt be varied by the State;* but as a rule the State where it enhanced its demand, restricted its action to fixing the demand on the zemindar, *leaving him to distribute it according to custom over the zemindari.*" This I

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* *See* Mr. Holt Mackenzie's opinion extracted further on.

consider a correct and very important statement; but afer making this admission Mr. O'Kinealy is driven to deny that "the State delegated to the zemindar its sovereign power to enhance the legal dues from time to time"; whereas I must contend that, saving the word 'sovereign', this is precisely what the State did delegate to the zemindar in settling with him as proprietor. I conceive that the correct way to put the case is that the State did not claim the power of arbitrary or unlimited enhancement, but only of enhancement, according to customary rules, and this power which, as Mr. O'Kinealy says, was usually exercised through the zemindars before 1789 was delegated to them by the Permanent Settlement.

32. Hence Mr. O'Kinealy sums up—"Lastly, I am not finally convinced, as Mr. Harrison is, that the rates were rack-rents, * * * but whether Mr. Harrison is right or wrong in his estimation of the rent then paid seems immaterial. I for one am of opinion that whether those rates were rack-rates or not, the zemindars are entitled to get them and obtain all the advantage given to them at that time. If greater experience has shown that these rates are rack-rates, the only remedy is for Government to reduce the Government demand and limit that of the zemindars, &c. On the other hand, if Mr. Harrison wishes to break through the permanent settlement and desires that Government should delegate its powers of enhancement to the zemindars, I feel bound to say that I am radically opposed to the proposal."

33. Thus Mr. O'Kinealy's argument eventually comes plainly and simply to the same conclusion as Mr. Mackenzie's. By the permanent settlement it was assumed that each ryot had a definite money rent to pay. This rent the zemindar could not enhance unless the produce was changed, and he is entitled to no more now than the very sum which he was then entitled to, nor can he claim any more from new ryots than rents based upon the same calculations. If this view is correct, both these gentlemen are, I admit, justified in the manner in which they propose to manipulate the occupancy rights, though unfortunately they are compelled to confer it on a class who will never accept it, unless accompanied by the right to sub-let, and hence the enormous boon, which I would not grudge if it could be equitably secured to the actual cultivators, must pass into the hands of middlemen. If it is incorrect, they are proposing to inflict a serious injustice on the zemindars without benefiting the actual cultivators by the system they would develop.

34. I dissent from their view on two distinct grounds—(1) that it is not a correct view of the operation of the pergunnah or customary rates, which were in effect, so far as they had any existence at all, only an intricate and ill-understood system of converting into a money equivalent the *State share of the produce*, and that this is in equity the standard to be appealed to: (2) that practically it goes behind Act X of 1859 on a point regarding which the framers of that Act intended to come to a clear decision, and this we ought not to do. I admit the perfect fairness of Mr. Mackenzie asking us to judge of the intention of the framers of Act X as regards the occupancy right, by referring to the older Regulations or of Baboo Mohini Mohun Roy asking us to consider whether the operation of the 20 years' presumption is not now unfair and its retention inexpedient: but when the framers of Act X clearly decided a moot question of the old law in one way, as they did when they recognized in the zemindars the right to enhance the rents of all ryots except such as had held at fixed rates from the time of the Permanent Settlement, it is not for us to challenge the correctness of that decision and frame our law on the assumption that they were wrong and that the zemindars had no legal means of enhancing a money rental.

35. The view I would adopt as the correct one, in opposition to this interpretation of the Regulations, is set forth in the following propositions:—

(a) The State, as such, had and has *sovereign* right of *taxing* all classes of its subjects, including landholders and cultivators. It is necessary to refer to this, as it explains some obscurity and occasional confusion of ideas in the language of the period of the Permanent Settlement. This right it certainly did not make over to the zemindars.

(b) It had also a *customary* right sometimes confused with the above, but radically distinct from it, as supreme proprietor, of taking the full market rent of the land for its own use. This proceeding is not taxation proper any more than the Crown enjoying the full rental of the Crown lands in England or the Queen of the lands belonging to her in the Isle of Wight is taxation. This is fundamentally the proprietary right, and was exercised in India by the State because, and only because, the State was the proprietor.

(c) By a natural process this proprietary right to the full market rent of the land was in time commuted to its proximate equivalent, the right *to a specific share in the gross produce of the land*, and the East India Company inherited the right in this stage from the Mogul Government.

(d) It was precisely this right, neither more or less, that it was intended to relinquish for a fixed contract sum to the zemindars by the Permanent Settlement.

(e) *Per contrâ* what it was intended to secure to the ryots was the enjoyment of *their* share of the produce, but not any part of the State's share, the whole of which was transferred to the zemindars.

(f) There is nothing in the specific provisions of the Regulations to justify a claim to anything more than this share of the produce on behalf of any ryots, except such as held extensive tenures from the time of the settlement.

36. As regards (*a*), it is not necessary to vindicate the proposition at any length. No one will question it. But Lord Cornwallis seems specially to mix up (*a*) and (*b*). For instance, in his arguments, paragraphs 32 and 33 of his minute of the 3rd February, quoted by Mr. O'Kinealy, he seems to regard raising the rents of an estate as imposing *taxes* on the tenants, and meets Mr. Shore's argument that as *proprietors* the landlords may raise their rents and

resist interference, as a claim on their behalf to impose *new taxes*. Similarly, while himself drawing the distinction in the passage quoted by Mr. O'Kinealy in paragraph 31 of his note, he says as a *reductio ad absurdum* this is not taxation, but a declaration that the property of the landholder is at the absolute disposal of Government. If he fully understood or admitted that the State was the landholder, there would be no absurdity.

37 *(b)*. I feel little doubt that the right of Government to the full normal rent of the land was the original foundation of the right to a specific share of the produce, but if any one questions this opinion it is of no consequence, and I waive any argument derived from it; the next proposition suffices.

38 *(c)*. Whether as a fundamental or as a derived right it matters little, but no one will, I think, question that at the time when the East India Company succeeded to the Mogul Government it was regarded as a normal right of the State that it was entitled to a *definite share of the gross produce of the land*. Thus, in the 5th Report, paragraph 16, quoted by Mr. O'Kinealy, we read—"This rule is traceable as a *general principle*, through *every part of the Empire which has yet come under the British dominion*, and undoubtedly had its origin in times anterior to the entering of the Mahomedans into India. By this rule the produce of the land, whether taken in kind *or estimated in money* (observe those words), was understood to be shared in *distinct* proportions between the cultivators and Government. The shares varied when the lands were recently cleared and required extraordinary labour, but when it was fully settled and productive, the cultivator had *about two-fifths* and the Government the remainder. The Government share was again divided with the zemindars and the village officers in such proportion that the zemindars retained no more than one-tenth of this share."

Or, again, as Lord Hastings says in his Revenue Minute of 21st September 1815—"It was well known (and even if it were questionable, the practice of the provinces which had more lately fallen under our dominion could set the doubt at rest) that the cultivating zemindars (*i. e.*, ryots) were by a custom more ancient than all law entitled *to a certain share of the produce of the lands*, and that the rest, whether collected by purgunnah zemindars or by the officers of Government, was collected as the *huk* of the *Sircar*."

It would be easy to quote numerous passages in support of this view, but Mr. O'Kinealy admits it so freely that it would be waste of time to do so.

39 *(d)*. Moreover, the next proposition, and the extracts which I have to adduce in support of it, and which show that this Government share of the produce was what was transferred to the zemindars, while the remaining share and that only was what it was intended to secure to the ryot at the Permanent Settlement, directly corroborate it. I maintain, then, that the fundamental idea of the Permanent Settlement was to transfer to the zemindar the Government share of the gross produce, whether paid in kind or *estimated in money*. Article 9 of Regulation I of 1793 seems to be so worded as to leave no room for possible doubt on this point. "From the limitation of the public demand upon the lands, the net income, and consequently the value (independent of increase of rent obtainable by improvements) of any landed property, for the assessment on which a distinct engagement has been or may be entered into between the Government and the proprietor, or that may be separately assessed, although included in one engagement with other estates belonging to the same proprietor, and which may be offered for public or private sale entire, will be ascertained by a comparison of the amount of the fixed jumma assessed upon it (which, agreeable to the foregoing declarations, is to remain unalterable for ever to whomsoever the property may be transferred) *with the whole of its produce*, allowing for the charges of management."

40. This makes it clear that produce, and not money rental, was the ultimate standard to be appealed to in any question of rent between the zemindar and ryot, and also explains the well known rule (inexplicable on any other grounds) that if the character of the produce was changed, the rent must also be changed. Mr. O'Kinealy, indeed, himself draws this very conclusion from the article, not seeming to see how fatal it is to his and Mr. Mackenzie's general contention. "The rule amounts to this * * * * * the net rental was a fixed—a certain and not an uncertain or variable *share of the produce*." We find, indeed, that in some cases, if the rental payable by the ryots could not be in any other way determined, it was a custom to settle the amount by an actual reference to produce.

41. "The cultivators of the soil had the right, or perhaps it was the usage, when excessive *money* rents were demanded of them, to offer to the person entitled to the *rent* of their lands the alternative of receiving his dues *in kind according to the pergunnah rule of division*."—(Report of Mr. Fane, Collector of Tirhoot, in 1821.) What is the meaning of this unless what Lord Hastings terms the 'huk of the Sircar' had been delegated to the zemindar? Hence, I have no fault to find with the description Mr. O'Kinealy gives at page 14 of his note of the relative position of the State, the zemindars, and the ryots as determined by the Permanent Settlement. "By the common law of India the ruling power was entitled to a certain, and only a certain, proportion of the produce either in money or in kind, of every beegha of land known as the legal due of Government, unless it transferred its right for a term or in perpetuity, or limited the public demand upon the whole lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, whilst he continued to discharge the latter. The Government limited its demand; the zemindars were expected to improve their estates, and thus to increase the raw produce of the country, and with it their certain share: but Government never intended to give in addition, either in whole or in part, the customary share of the ryot, which did not belong to it, which it never even claimed."

42. How Mr. O'Kinealy reconciles the doctrine of this passage with his general conten-

tion that Government did not "delegate its powers of enhancement to the zemindars," I am at a loss to conceive. The cultivator's share of the produce was, as pointed out by Mr. O'Kinealy, never claimed by the Government. Its sovereign power of taxation may have extended to this share, but its customary powers of assessment only extended to ascertaining, and from time to time fixing, in money, the value of the State share of the produce. This power it obviously delegated to the zemindars, while at the same time it no doubt intended to protect the ryots from encroachments on the remainder.

43. The question is of so much importance, and Mr. O'Kinealy's and Mr. Mackenzie's contention so obviously depends on the argument that the State did not delegate its *share of the produce* to the zemindars that I will give a series of extracts from the chief authorities of the period favourable to the ryots, showing that this was the only doctrine known to them. Thus, Mr. Harrington's own opinion given at page 35 of his minute of the 3rd July 1827, is "that *the rights and interests of the State in the land rents payable by the ryots* and other occupants of the soil, *were made over by composition and contract* in perpetuity to the persons who engaged for the land revenue receivable by Government."

44. Mr. Holt Mackenzie thus writes to Mr. Harrington:—"I think therefore that you have essentially diminished the chance of doing good, through the proposed Regulation, by omitting the rules I proposed with the view of assessing or compelling the zemindars to assess all estates for which the Government demand has been fixed *on the same principle as is applicable to estates not permanently settled,* and to lakhiraj lands."

What would be the meaning of assessing permanently settled estates on the same principle as is applicable to estates not permanently settled, unless Mr. Holt Mackenzie considered that in the former the zemindar stood in precisely the same position as the State did in the latter?

45. Again, in 1832, the Governor General, Lord William Bentinck, thus wrote in his letter dated 29th September to the Court of Directors:—"It was observed that in regard to the provinces under a perpetual settlement it might be premised that rents had greatly risen since the year 1793, in consequence of the rise of prices. The question then was—Who was to reap the profit arising from that source? The Government had precluded itself from participating in the benefit. If the ryots were to participate, by what standard was the demand upon them to be regulated? If it were possible to ascertain the rents paid by them in 1793, it would," in His Lordship's opinion, "be unjust to fix those rates at the present day. In many instances the increase of profit might have been created by means of improvements made at the exclusive expense of the zemindars; in many more instances the fee-simple of estates had been transferred on the understanding that the rents were not to suffer diminution by the act of the Legislature, and any attempt now to interfere between the landlord and tenant would," His Lordship apprehended, "be productive of infinite confusion, and would infallibly tend to shake the confidence which the people had hitherto reposed in the Government."

* * * * * *

There was, "however, *no disputing the fact,* that in 1793 the British Government *disclaimed for itself and in favour of the zemindars* all claim to the rent of the land, in consideration of a fixed annual revenue, which the zemindars bound themselves to pay. The Regulations of Government provided at the same time for the preservation of all rights, prescriptive and other, of all the cultivating classes. The ryots were heretofore nominally the tenants of the State, but they became *de jure* what they had long been *de facto* the tenants of the zemindars, whose demand on them was thus acknowledged and legalized to the *extent of the Government share of the gross produce of the soil;* what that share was, *i. e.,* what proportion it bore to the whole, never having been defined. But at the same time" His Lordship was of opinion "that in fixing the revenue in perpetuity the Government compromised no rights but its own *to the increased rent which would have accrued naturally from increased produce, enhanced prices,* and the reclaiming of waste lands; and that no act of the Government could be construed as legalizing a demand on the part of the zemindars of more than *the proper land rent, that is, the Government share of the gross produce;* but at the same time *all that the cultivating classes had a right to demand* was that the proportion which the Government share should bear to the gross produce of the soil should be regulated on some fixed principle which might always and easily be appealed to. The rent realized by the zemindar would fluctuate, more or less, under such a principle; but by this fluctuation he would gain as often as he would lose, and the rent taken from the cultivating tenant would not trench, as it might be feared was sometimes the case at present, on the very means of subsistence and just wages of labour."

46. It is very obvious from the above what Lord William Bentinck would have thought of Mr. O'Kinealy's denial that the State delegated its powers of enhancement to the zemindars; it delegated precisely what it possessed, the right to the Government share of the produce which, when commuted from time to time into money payments, involved enhancement of rents. Nor do I see that any other conclusion legitimately follows from the correspondence between Sir John Shore, Lord Cornwallis, and the Court of Directors to which Mr. O'Kinealy expressly appeals.

47. In that correspondence Sir John Shore confidently expresses his opinion that any settlement with the zemindars as proprietors would naturally lead to their claiming, not merely the full powers of the State to enhance the rents of the ryots, but even unlimited powers to do so. It is this extreme claim which Mr. Shore puts into the mouth of the zemindars to which Lord Cornwallis more specially objects. "If Mr. Shore means that, after having declared the zemindar proprietor of the soil, in order to be consistent we have no right to pre-

vent him imposing new abwabs or taxes on the lands in cultivation, I must differ from him in opinion." The imposition of abwabs or cesses was always regarded as an illegal exaction, though, as Mr. Field has correctly pointed out, it was often only an illegal way of obtaining enhanced money rents which the zemindar was perfectly entitled to demand on other and legal grounds. Lord Cornwallis' argument that every ryot must hold his land under an express or implied agreement to pay a certain sum obviously comes to nothing, if, as was evidently the true state of the case, the sum was to be calculated on a portion of the produce commuted into money, and not a sum independent of the kind and value of the crops produced. So far as Lord Cornwallis objected to the zemindars exercising more powers of enhancement than resulted from their being the heirs of the Government share of the produce, his contention may be freely admitted. But though his argument is somewhat confused, it contains nothing which indicates that he would have refused to allow them to enhance up to the full value of the Government share of the produce.

48. But whether Lord Cornwallis would or would not concede this right, the Court of Directors in their reply seemed to have fairly recognized it. "As so great a change in habits and situation can only be gradual, the interference of Government may, for a considerable period, be necessary to prevent the landholders from making use of their own permanent position for the purpose of exaction and oppression. We therefore wish to have it distinctly understood that while we confirm to the landholders the possession of the districts which they now hold, and subject only to the revenue now settled, and while we *disclaim any interference with respect to the situation of the ryots or the sums paid by them* with any view *to an addition of revenue to ourselves*, we expressly reserve the right which clearly belongs to us as *sovereigns* of interposing our authority in making from time to time all such Regulations as may be necessary to prevent the ryots being improperly disturbed in their possession or loaded with unwarrantable exactions."

49. I see no fundamental difference between the argument of the Court of Directors and that of Lord William Bentinck previously quoted. In effect the Court of Directors say that there is danger that the zemindars will utilize their new permanent position entitling them to claim the rents previously due to the State as a lever for unduly extending these rights and preferring unwarrantable demands. With the rents legally due to the State, which now become due to the zemindars, no interference should be exercised; but if the zemindars exceeded these limits, the sovereign power of the State to protect all classes in the enjoyment of their rights must be brought into operation.

50(*c*). The next proposition follows from the preceding one, and is indeed proved by the same arguments. I cannot find a single authority for the view that Government intended to give to the ryots any benefit from enhanced prices operating on the State share of the produce, the arguments and apprehensions are all the other way, that the zemindars will take so much as to trench on the ryot's share of the produce.

51. I maintain, then, that the spirit and intention of the Permanent Settlement was to secure to the ryots the share of the produce to which they previously had been entitled, and to protect them against abwabs or cesses, such as Lord Cornwallis would call taxation, coming out of their share of the gross produce. On the other hand, there is no evidence whatsoever to show that it was intended to confer upon them any *new* proprietary rights other than those which they already possessed adversely to the State. As regards the zemindars, the intention was to confer on them for a contract sum the Government share of the gross produce, and to this extent to confer on them a *greater* proprietary interest than they previously possessed.

52(*e*). Perhaps, however, it may be contended that in giving effect to this intention certain provisions were introduced into the Regulations which extended to the ryots greater protection than the above.

By section 54, Regulation VIII of 1793, all zemindars were required to revise the abwabs then being collected in concert with the ryot, and to consolidate them with the assul into one specific sum: pottahs would then be delivered within a specified period on the above terms.

By section 55 the imposition of new abwabs or mhatoot is absolutely prohibited, thus protecting them against what Lord Cornwallis called new taxation. Evidently the above provisions impose obligations on both parties. If the zemindar be prohibited from imposing new cesses, the ryots are bound to accept the consolidation with the assul of those already in existence, a stipulation which can only be considered reasonable if it be admitted that these abwabs practically replaced the increased rents to which the zemindars were on other grounds legally entitled. If the zemindar is bound to deliver, the ryot is bound to accept the pottahs on these terms.

53. I need not follow Mr. Mackenzie in analysing all the sections of Regulation VIII of 1793 which bear upon the question. They no doubt indicate a hope that money rents will be preferred, and also offer what would practically be an *istimraree* tenure to those ryots who were willing to accept the consolidation of the abwabs with the assul, and could claim pottah for money rents on those terms; but, on the other hand, they clearly left the pergunnah rates intact wherever they existed. We have, therefore, to consider the following cases as affected by the above rules:—

(*a*) The case of ryots at the time of the settlement holding their lands at definite money rates not dependent upon the nature or value of the produce, who agreed to accept pottahs consolidating the assul and the abwabs.

(*b*) The case of similar ryots who, however, declined to accept pottahs on those terms.

(c) The case of ryots who, while not holding fixed money rents, united with the zemindar in agreeing to hold at such rents for the future according to section 56.

(d) The case of ryots, whose rents were determined according to pergunnah rates, the measurement of crops, payments in kind, or any other similar system dependent on custom.

(e) The case of the ryots not in existence at the time of the Permanent Settlement, who either brought waste lands under cultivation, or who succeeded to the holdings of other ryots which had been relinquished in favour of the zemindar.

54. Of the above, class (a) seems to be entitled to hold at fixed rates permanently. As regards class (b), this cannot be affirmed with equal confidence. The obligation of agreeing to the terms prescribed by the Legislature was mutual. If the ryots would not accept pottahs consolidating the abwabs with the rent (and we know that in most cases they persistently refused to do so), the zemindar would be entitled to cancel the pottah and to enter into an engagement with a new tenant in accordance with any of the systems indicated in the Regulations. The third-class would apparently have the same rights as the first; but the fourth and fifth classes could apparently raise no objections to the rates of rent being determined on the basis of produce, unless it could be specifically proved that the pergunnah rate was determined on some other consideration. Considering, therefore, the overwhelming evidence that can be adduced to show that a share of the gross produce was the fundamental standard by which the liabilities of the ryot were determined, there seems nothing in this Regulation negativing the maintenance of this standard except as regards classes (a) and (c) and their descendants. This view of the effect of the Regulations seems clearly in accordance with the opinions which currently obtained amongst the most experienced revenue officers of Government for a period succeeding the settlement.

55. Mr. Mackenzie refers, in paragraph 27 (b) of his note of the 20th January, to the draft Regulation drawn up by Mr. Harrington in 1826. In the minute from which I have already quoted, to which that draft Regulation is an annexure, Mr. Harrington fully states his own views of the position of the ryots under the Permanent Settlement. He emphasises those views by expressly stating that they are the result of forty years' experience; and it will not be denied that his object was to make out the best case he could for the ryots. The first of the causes which he enumerates as having led to the failure of securing the ryots against oppression is—

"The omission of clear and definite rules in the Regulations of 1793, and subsequent years, for declaring the rights and tenure of the ryots whose rents were, in many instances, left to be adjusted by pergunnah or other supposed local rates, no longer in existence, or ascertainable." He attributes this omission to the extreme *intricacy* and *difficulty* of the subject, and quotes Sir John Shore's views to this effect.

56. As early as 1812 Mr. H. Colbrooke was "compelled, however reluctantly, to relinquish the idea of restoring a definite and certain standard of rents." A few years later, however, he was so impressed with the necessity of taking some measures for protecting the ryots from oppression that he proposed to substitute for the old undiscoverable rates the best equivalents which could now be ascertained, "without any apprehension of violating faith if they should differ in some degree from the ancient usage under the difficulty which must now attend the research."

57. Commenting on these minutes of Mr. Colbrooke, and on the propositions made in the correspondence to which they led, Mr. Harrington remarks that "there is too much reason to conclude that there has been a very general enhancement of the rents of land in the Province of Bengal during the period which has elapsed since the formation of the Permanent Settlement in 1790; and if engagements have been taken for it from the cultivators and under-tenants, *I see not how they can be set aside at this time*, unless shown to have been extorted by compulsion, or to be otherwise unlawful. Where no voluntary engagements may have been executed, *and* the tenure is of a permanent nature (such as that of a khudkhast occupant), held, according to established usage, on condition of paying a specific rent, or a rent determinable by a fixed rate, or other known principle of adjustment, there seems to be no just and sufficient reason why any excess taken in past years, above the proper rent, which ought to have been received according to the conditions of the tenure, should be authorized, and allowed to be taken without the consent of the tenants, in future years.

* * * * * *

"A distinction, however, must, I conceive, be made *between the ancient tenures, which subsisted before the Permanent Settlement, and such as have been since created by the landholders* with whom that settlement was made, or their representatives. If waste lands have been brought into cultivation on specific conditions voluntarily accepted by the tenant, or any other tenures have been acquired from the landholders since the formation of the Permanent Settlement, and such conditions and tenures are legal and unexceptionable under the Regulations in force, they must, I think, be maintained."

58. It is quite evident that, as regards holdings which date from a period after the Permanent Settlement, Mr. Harrington would allow the landlord the fullest discretion, so far as not absolutely prohibited by law. Obviously under this principle a zemindar might recover any rent he could obtain not exceeding the money equivalent of the *State share of the produce*, which I contend is the only equitable limitation that can be derived from the Permanent Settlement to the demands of the zemindar from all ryots who do not hold *istimraree* tenures.

59. Similarly, in the same minute, commenting on a proposal of Mr. Holt Mackenzie's which I have already quoted, to settle the rents of ryots in permanently settled estates by the agency of the Collectors, Mr. Harrington writes:—"Now, however proper it may be to vest the revenue officers with the powers above specified in all instances where a Permanent Settlement has not been made with the landholders, and however much we may regret that it was not done in the Lower Provinces (as virtually proposed by Mr. Shore) *before the rights and interests of the State in the rents payable by the ryots* and other occupants of the soil were made over by composition and contract in perpetuity to the persons who engaged for the land revenue receivable by Government, I cannot *but entertain some doubt, whether we should now be warranted in taking out of the hands of the landholders, and placing in those of the Collectors, or other officers of Government, the entire adjustment of the rents of their estates.*"

60. The opinion of the Court of Directors at this time as to the extent of the ryot's rights appears in the following passage in a despatch dated 10th November 1824:—"Should you succeed in securing to the ryots those rights which it was assuredly the intention of the Permanent Settlement arrangements to preserve and maintain, and should you in all cases where the nature and extent of these rights cannot be now satisfactorily ascertained and fixed provide such a limit to the demand upon the ryots *as fully to leave to them the cultivators' profits* under leases of considerable length, we should hope that the interests of that great body of the agricultural community may be satisfactorily secured."

It appears from this passage that what the Court of Directors considered as the nearest equivalent to the ryots' share of the produce was the cultivators' profits.

61. Mr. Harrington with his minute submitted a draft Regulation for the protection of the ryots, but even his moderate proposals—moderate at least in comparison with the claims now preferred in their behalf by Mr. O'Kinealy and Mr. Mackenzie—were not accepted. They were, as Mr. Mackenzie remarks, violently opposed by two of the Judges of the Sudder Adawlut as an infringement of the Permanent Settlement and were abandoned.

62. I have already referred to a memorial on the land tenure of India by Mr. N. J. Halhed. His views on the standard by which the ryot's rent receipts ought to be regulated are instructive, as he was an ardent champion of the ryots. He recommends that the true statistics regarding the assessment of the ryots in permanently settled estates should be obtained. This would enable the Collectors "to determine whether the demands upon the ryots were such as to afford the cultivators a fair return for their risk and labour, and in all cases of over-demand to fix a proper limit. When the standard of taxation has been ascertained, the zemindars must be prohibited from taking anything in excess of it." Though I would demur to Mr. Halhed's use of the word "taxation" as inappropriate, it is evident he does not consider the ryots entitled to more than the cultivator's return.

63. I now come to the opinion of Lord William Bentinck in the letter of the 29th September 1832 already referred to:—"His Lordship would not attempt to fix a rent upon each field either in money or in produce, which a landlord-zemindar could legally demand; but the very favourable terms on which the Permanent Settlement was concluded with the zemindars, the right which Government always has reserved to itself of interfering on behalf of the cultivating community, and the want of moderation which has generally been shown by the zemindars in regulating their demands on their tenants who are attached by habit to the soil and cannot from peculiarity of circumstances avail themselves of the same remedies by which tenants in other countries counteract the exorbitant demands of their landlords, were, His Lordship observed, all reasons which called for or would justify on the part of Government some attempt to fix a limit to the demands of the landlord.

"The difficulty lay in fixing the proportion of the standard crops which, without depriving the zemindar of his proprietary right would still leave the producer a fair remuneration, but not an excessive one, for his labour and outlay. His Lordship *assumed that the ryots in Bengal of the present day had no right to participate in the profits arising out of the limitation of the Government demand,* and he therefore did not deem it incumbent on Government to enact at all hazards new rules for their protection, but should the Vice-President in Council consider it proper to agitate the question further by circulating interrogatories to the mofussil authorities, His Lordship was of opinion that their attention should be confined to the point of determining *how far it would be expedient and practicable to allow an option to the cultivators to pay in kind.*"

64. I consider that I have sufficiently proved all the propositions which I enumerated in paragraph 35. It was the intention of the Permanent Settlement to make over to the zemindars its own interest in the land, that is, the Government share of the produce, and *whatever money rent* was the equivalent of that share, and the only ryots protected from enhancement up to this limit by the terms of the settlement were such as held *istimraree* tenures, and acted upon their rights so far as either to take pottahs on the prescribed terms or at least to resist successfully any enhancement of their rents. Mr. Mackenzie's and Mr. O'Kinealy's argument comes to this, that all resident ryots are, according to the intentions of that settlement, entitled to hold *now* at the same *money rental* that they were or might have been found liable to pay in 1793, and by this means they justify the endeavour to obtain for them very favourable terms. I maintain that this is glaringly in contradiction to the *spirit* of that settlement, which was manifestly to give the zemindar the full benefit of any increase derived from the Government share of the produce, and only obtains some colour of support from the letter of the Regulations, because the chief author of these Regulations did not realize that fixing money rents was not *protecting the ryots,* but conferring on them most valuable proprietary rights which at that time were vested in the State.

65. (2.) I now come to the second point that, whatever argument Mr. O'Kinealy and Mr. Mackenzie may construct out of the words of the Regulations and the writings of its chief authors, these arguments were not only not accepted by the chief revenue as well as judicial officers of Government after the settlement, but also do not represent the view of those Regulations taken by the framers of Act X of 1859, and that we as a Commission ought not to go behind that Act in an important question of principle of this kind.

66. Act X recognizes no class entitled to hold at privileged rates except those who held *istemraree* tenures from the time of the Permanent Settlement, or who could give what was considered sufficient presumptive proof of this. Ordinary ryots having rights of occupancy were to pay a fair and equitable rent. Now, we know that these words were chosen with much care and in preference to any reference to "pergunnah" or "customary" rates of rent. But what meaning can fair and equitable as applied to rent have except such a rent as secures to the rent-payer the full cultivation profits of the land and to the rent-receiver the full natural rent of it. Mr. Mackenzie objects to any comparison of the rent of occupancy ryots with those of tenants-at-will, who of course have to pay the rent determined by the market value of the land. It does not matter much whether we call it the natural rent, the market rate of rent, the competition rent, or by any other name. That rent which the land can afford to pay is the rational standard of a fair and equitable rent, and if we endeavour to adopt any other, or desire to make any other standard than that of supply and demand, the test of what is fair and equitable, we commit a grievous mistake.

67. Moreover, we have the very best evidence possible *that this was the intention of the framers of the Act*, in the letter of Sir Henry Ricketts, which forms part of the correspondence which has been laid before us. In this letter Sir Henry Ricketts thus writes:—"Assuredly when we were engaged in framing Act X of 1859, and said in section 6 any ryot who has cultivated or held land for 12 years has a right of occupancy in the land so held and cultivated by him, and in section 5 ryots having right of occupancy are entitled to receive pottahs at fair and equitable rents, we never dreamed of giving them an advantage of one-third over their tenants-at-will neighbours. * * As far as I can recollect in all the discussions we had in framing Act X of 1859, in all the suggestions we received from all parts of the country, there was never any mention of any considerable advantage to occupancy ryots beyond protection against summary dispossession. Having held possession for 12 years, a ryot was to have the right of remaining in possession *at a fair and equitable rent. Assuredly in 1859 the market rate of the day regulated by cost of labour, value of produce, increasing or decreasing demands for land, was the rate held to be fair and equitable*." It would be impossible to find a more emphatic condemnation by anticipation of the line of argument which Mr. Mackenzie and Mr. O'Kinealy have adopted than is contained in the above passage.

68. I consider, therefore, there is nothing whatever to warrant the argument by which Mr. Mackenzie justifies his proposal to fix a low rental for occupancy ryots of the present day. Now that the ryot's right has by lapse of time and advancing prices become generally a thing of real value, I can support no proposal which tends to confiscate this, or to limit it in an arbitrary and unconstitutional way. If Mr. Mackenzie means that the share of the gross produce which it was intended to secure to the ryots at the Permanent Settlement has now become a thing of real value, he is, I am certain, totally mistaken, and no ryot of the present day will thank him for securing him two-fifths or whatever other proportion of the gross produce it was customary for him to receive in 1793. If he means anything else, the confiscation is on the other side. The Permanent Settlement intended to confer on the zemindar the full Government share of the gross produce; give him that share now, or its equivalent in money, and he will be abundantly satisfied. Act X of 1859 was designed to give him the full market rent of land as determined by supply and demand, and it is the failure of the courts to give practical effect to that intention, and not enhanced prices, which has converted the occupancy right into a thing of real value.

69. My argument that rents at the time of the Permanent Settlement were rack-rents, or say 'full rents' as much as the land could afford to pay, is a much more dangerous one to their theory than Mr. Mackenzie and Mr. O'Kinealy are disposed to admit; as the zemindars are entitled to the same *share* of the produce *now* as yielded that rent *then*, and the simple fact is that a reversion to the standard of the Permanent Settlement means sheer ruin to the ryots; in fact, the exactly opposite result to that for which Mr. O'Kinealy and Mr. Mackenzie contend. The truth is that from some cause or other the ryots, even in 1793, were unable to pay the pergunnah rates which were supposed to be the equivalent of the State share of the produce. Whether the cost of cultivation had unduly increased, or whether the second class lands, which had to be cultivated, could not pay the same proportion of the produce as the first class lands that would be first cultivated, or whether the very complicated rules for ascertaining the pergunnah rates from the value of the produce had been manipulated in the interests of the zemindars, be the cause what it may, the effect is clear that these rates were higher than what the ryots did pay or could afford to pay. And it is owing to this cause quite as much as to the indefiniteness of the rules that the protection afforded the ryots by the Permanent Settlement Regulations proved so inadequate.

70. Mr. Holt Mackenzie's opinion on this point seems quite decisive. In a letter to Mr. Harrington, quoted by that gentleman in his minute, and already referred to, he thus writes:—"Reference to pergunnah rates is full of danger. Where the canoongoe office has been uniformly maintained, they seem to be familiarly known, and in some districts they come *near the rates actually chargeable*; but in most districts *they cannot be applied without ruin to the ryots;* and where they come nearest to the actually prevailing rates *they must be applied with*

so much allowance for nabood, and the like, as to be nearly nugatory, leaving the actual assessment which would result from them vague and uncertain."

71. Mr. Shore's opinion was that the settlement of Toodur Mull may have probably formed the basis of the pergunnah rates; and he also states in his minute that "these rates are formed with respect to the produce of the land at so much per beegha." Some attempt must have undoubtedly been made of the kind described by Mr. Field to arrange them so that they would fluctuate with the current value of the produce; otherwise, it is difficult to conceive why the system should have been as intricate and difficult to explain as Sir John Shore says that it was.

At any rate Mr. Shore says, in 1789, that "the rates not only varied in the different Collectorships, but in the pergunnahs composing them, in the villages, and in the lands of the same village, and the total exacted far exceeded *the rates of Toodur Mull.*" Evidently therefore there was some system by which the rates could be raised, and at the time of the Permanent Settlement they were in most places higher than the lands could afford to pay.

72. I hold, therefore, most emphatically that any attempt to make out the right of occupancy ryots to hold their lands at anything less than market rates from the letter of the Regulations, enacted at the time of the Permanent Settlement, or from the spirit of that settlement, is altogether futile. All that could be established is the right of the ryots to the secure enjoyment of two-fifths of the gross produce or whatever else may have been their customary share. Equally futile is it to rely on the interpretation of those Regulations adopted by Act X of 1859. The full market value of the rent was the rate which the framers of that Act intended fair and equitable.

73. If therefore we wish to give the occupancy ryot an advantageous tenure, we must justify our doing so on other grounds. This is what I would do on the ground of public policy as well as on the ground that it is the natural development of a right such as that of the occupancy ryot which was defined by Act X of 1859. In Bengal competition tends and will continue to tend to run up the rents of tenants-at-will to a point which leaves them the barest cultivator's profits. It is to the best interests of society that the regular body of cultivators should receive something more, something that will remove them from the condition of cottiers, and therefore I would openly give them some advantage. Moreover, any limitation to perfect freedom of contract, as regards land, must, if left to its natural operation, influence the market price in favour of the protected party. The fact that one tenant is liable to have his rent enhanced arbitrarily, while in the case of the other this can only be done after a suit in court, and after the court has come to a conclusion on the equity of the rent demanded, must inevitably secure the latter more favourable terms.

74. It cannot, I would contend, be unfair to give effect to this distinction when the Collector is called upon, as he will be under the draft Bill, to determine the prevailing rates of rent of both classes of ryots. And therefore if he finds that tenants left to perfect freedom of contract have to pay at a certain rate, there is nothing unreasonable in his fixing a somewhat lower rate for tenants with rights of occupancy. I infer from the tone of Sir H. Ricketts' letter that, while it was not intended in 1859, he would in no way disapprove of this, though he considers it difficult to determine what percentage of advantage would be expedient.

75. At any rate let us labour under no delusions, and let us not attempt to justify the favourable tenure of the occupant ryot on grounds which will not bear investigation. If the occupancy ryot is to be given a tenure on advantageous terms, it must be in the form of a concession which is justified as a natural development of the state of things created by Act X of 1859, and by the requirements of public policy.

76. Moreover, I cannot but think that concessions ought to be made on both sides with great advantage. The zemindar ought, I think, to concede to the occupancy ryot a holding on more favourable terms than tenants-at-will, the rate being not more than 25 and not less than 12½ per cent. He ought also to waive all objections to the acquisition of the occupancy right being facilitated, and to the Legislature taking effectual means to put it in the power of any *bonâ fide* cultivator who settles down in a neighbourhood and makes cultivation his profession to acquire occupancy. Individually, though very reluctant to touch so established a landmark as the 12 years rule, I think there is no great objection on any other ground, or injustice in reducing the period as Mr. Mackenzie proposes.

77. On the other hand, the more I think over it, the more I am satisfied of the justice of the claim of the zemindars, as preferred by Baboo Mohiny Mohun Roy, to some alteration in the 20 years presumption rule, and I look upon this as the chief concession that ought to be made to the zemindar *per contrâ*. This touches no principle, only a mere presumption or rule of evidence, which may have been fair in 1859 when neither party was forewarned, but which becomes more unfair every year when the ryot can accumulate his evidence, but the zemindar can practically do nothing to procure any rebutting evidence. Moreover, it is particularly unfair as regards auction-purchasers who can procure no evidence from their predecessors.

78. It has the further great disadvantage pointed out by Baboo Mohiny Mohun Roy that it drives a friendly and lenient but prudent zemindar to a general enhancement of rents every 15 years or so to prevent the fatal evidence of an *istemraree* tenure being built up against him. I believe the presumption to be untrue as well as unjust; untrue because there are numberless ryots whose rents the zemindars have not been able to enhance since 1859, who nevertheless have not held at fixed rates since the Permanent Settlement; unjust because by its silent operation it is gradually enlarging the number of such tenures which in equity is no longer susceptible of increase.

79. I would therefore provide for the 20 years, being the 20 years before the new Bill becomes law, and would at the same time allow any ryot who now possesses such evidence to register his tenure so as to prevent his losing the evidence hereafter. I would not make registration obligatory, as many ryots might never become aware of the provision.

80. In conclusion, I would indicate the lines on which the Bill, in my opinion, so far as it depends on sub-letting, should be drawn up. I am well aware that the work of destruction is much easier than that of construction, and I therefore do not think this the more difficult part of the work. It should then, I think, be laid down in the most unqualified and uncompromising manner that sub-letting, at least as a system or for any long period, is an entire abuse of the occupancy right, and leads to its forfeiture if persevered in. There are a variety of rights in land which may be sub-let, putnees, mocurarees, aymas, hawals, and many more. I would put no restriction on the sub-letting of these interests; but the occupancy right is designed to protect cultivation and is sacred to the cultivator, and to sub-let it, save in exceptional circumstances, is altogether an abuse of it.

81. I do not believe, however, that we can satisfactorily discourage it except *by interesting the landlord in its suppression.* I distrust Mr. Mackenzie's self-adjusting proposal because it does not give the zemindar any interest in stopping sub-letting; and unless we utilize his agency, we can hardly expect to succeed. I would, therefore, not hesitate to prescribe that if the occupant ryot sub-lets, or, if you like say sub-lets for a longer period than two years, the zemindar may serve a notice upon him requiring him to resume cultivation. If he fails to do so during the agricultural year succeeding the service of the notice, I would authorize the zemindar to eject him, and at his option to take over the sub-lessee as his tenant, or lease the land to another tenant. In either case the right of occupancy would lapse. If, however, the zemindar fails to take action for twelve years, and the land remains sub-let to the same sub-lessee, this man would acquire the right of occupancy, and could claim to be admitted as his tenant by the zemindar. The zemindar similarly could call upon the sub-lessee to attorn to him; in either case the rent of the new tenant would be the sum which he was paying, or the sum the former tenant was paying, whichever might be highest. In this way there would be some prospect after a time of effectually discouraging sub-letting.

82. If the occupancy ryot, on the other hand, sub-lets a portion only of his holding, the zemindar should have the same right of calling upon him to resume cultivation of the whole, and on his failing to comply the occupancy right would lapse. If, however, no action was taken for twelve years, it would be fairer to oust the occupancy ryot only from the portion sub-let, leaving him his right intact in the remainder. The zemindar could not complain of the division of the holding which would thus result, as he could have put a stop to it at an earlier period had he chosen. This, however, is a matter of detail.

83. The above system would apply to ryots obtaining the right of occupancy after the Bill became law, and also to such as already possessed it, but had not hitherto sub-let. Some further provisions are necessary to meet the case of ryots already possessed of the right of occupancy who may have sub-let before the Act came into force. If the sub-lessee had not been in possession for twelve years no difficulty would arise. The occupancy ryot would be able to resume cultivation at his option, and failing to do so the penalty will be as before. If, however, the twelve years were nearly completed, he should be allowed two or three years after the Act came into force to avail himself of this resource.

84. The case, however, remains in which the occupancy ryot may have sub-let for more than twelve years. Under these circumstances, Mr. Mackenzie's draft Bill proposed to vest the occupancy right in the sub-lessee, converting the former occupant ryot into a middleman. I would adopt this except that I think it would be fairer to allow the occupant ryot a limited period, say three years, after the Act came into force, within which he might resume cultivation. Under the existing law the sub-lessee of an occupancy ryot does not acquire occupancy rights; and it would be no injustice to keep him out of them under the new law for a brief period.

85. The Rungpore jotedars, the Backergunge hawaladars, and other ryots of this class who systematically sub-let, but who, under the existing law, would not improbably be held as the occupancy ryots, would no doubt not avail themselves of the option. They would then become in name what they are already in fact middlemen, and unless they could prove by local custom or by the circumstances of their tenure before 1859, or by express contract, that they are entitled to a profit of more than 10 per cent. besides the cost of collection, they should be allowed this amount. I say designedly before 1859, because since Act X of that year came into force the position of such ryots has been somewhat abnormal. The zemindars, especially since 1869, have not been able practically to obtain the "fair and equitable" rents from occupancy ryots, which it was the intention of the Act to give them. Any customary profit which the jotedars and others might lay claim to in excess of the 10 per cent. ought therefore to be established by evidence derived from an earlier period.

86. I suggest it as reasonable to allow the occupancy ryot to sub-let for two years before giving the zemindar any right to interfere. This is a detail which is not vital to the scheme, but I am inclined to think that no evil consequences would ensue from conceding to the occupant ryots thus much. There might be many cases in which a *bonâ fide* cultivator might require to sub-let for a year or two, such as his going on a pilgrimage to Pooree or to Mecca, and this provision would also meet the difficulty which arises from making the occupancy right transferable. Once made transferable, extreme inconvenience would follow if any attempt was made, as was previously proposed, to preclude any but actual cultivators from purchasing. With the provision of allowing sub-letting for two years, it

would be open to any one to purchase the occupancy right, but he would not be able to retain it for more than two years, unless he cultivated it himself. During that period he might find another purchaser who would be prepared to cultivate in person and re-transfer the right to him; the new purchaser would then become the tenant, and the interest of the new cultivating purchaser would determine. Such a provision would considerably enhance the value of the occupancy right. If only actual cultivators are admitted to bid, the value will be much depreciated and all kinds of difficulties arise.

87. If, on the other hand, sub-letting to an unlimited extent is formally legalized, the objections against allowing the occupancy right to be transferred at the option of the tenant are indefinitely magnified. It will only lead to the right passing into the hands of money-lenders, rival zemindars, and other persons who will prove quarrelsome and obstructive tenants, and useless middlemen and rack-renters. Where the occupancy ryot is a lunatic, minor or a woman, sub-letting for a longer period might be necessary, but even in these cases I would fix a definite limit of five or six years at the outside. The disqualified ryot might always cultivate by hired labour or sell the occupancy right, and in the interests of public policy it would be best to require him to resort to one of these alternatives, when the disqualification was likely to be of long duration.

88. We know the zemindars would probably object to the above procedure on the ground that it creates an additional middleman between the landlord and the cultivator; and instead of their being able to obtain the "fair and equitable" rent to which they are entitled from the occupancy ryot, they would only be able to obtain this rent less the 10 per cent. or other customary reduction that the new middleman could claim. I do not think this objection is one which the zemindars would be wise to press, or which is entitled to much consideration. The very fact that the tenure has for years been sub-let (and this is the hypothesis under which the difficulty arises) proves that the zemindar *has not been obtaining the full rent of the land;* he is therefore placed in no worse position than that which he has been actually occupying in the past. On the other hand, by precluding sub-letting and attaching the occupancy right to the actual cultivator, the new "fair and equitable" rent will be, as before shown, much higher than it has been in most cases where sub-letting largely prevails, and also, as Mr. O'Kinealy fully admitted, much higher than it would be if the sub-letting of the occupancy right is legalized. No true friend of the zemindars would, therefore, advise him to press this objection; if he loses 10 per cent. of a hypothetical rental, which under any other system he would never obtain, he gains, on the other hand, 50 or 60 per cent. more than he would be likely to obtain under the only other alternative that is proposed.

89. On the other hand, this system brings into prominence the necessity for according the zemindar some practicable means of enhancing the rents of middlemen. If sub-letting is legalized, the middleman will in general be the occupancy ryot, and his rent will be susceptible of enhancement under the rules for the enhancement of rents for such ryots. In this event the necessity for any special means for enhancing the rents of middlemen is much diminished; but if all occupancy ryots who habitually sub-let are converted into middlemen, some self-acting provision, such as I have proposed, to enable the zemindar to call upon the middleman to name the rent he is willing to pay, and in the event of the rent named being adequate to enable the zemindar to purchase the tenure at advantageous terms, will be requisite. This proposal is perhaps too novel to be adopted in the present Bill, and before the urgent necessity for something of the kind is proved by experience; but I throw it out for consideration now under the belief that if sub-letting is to be prohibited the advantages which it offers and the necessity for something of the kind will soon become apparent.

90. This proposal also leads me to point out that it is very desirable to introduce a provision into the new Bill distinctly prohibiting any tenant from creating an encumbrance of a greater extent than his own interest in the land; that is, if he is a tenant for a term of years, he should not be entitled to create a permanent tenure; and if he is a tenant entitled to hold at a fluctuating rental, he should not be allowed to create an under-tenure at a fixed rent. The inconvenience of these encumbrances which are binding on the person creating them and therefore on his transferees has lately been brought prominently to notice. They obviously lead to fraud on the purchaser, and it is consonant both with law and equity to make them void *ab initio,* except to the extent of the interest of the person creating them.

91. In conclusion, I have only to point out that the last part of this note can be taken as a mere outline only of the shape in which I would mould the Bill, and is attached to the note only to meet the objection that no system disallowing sub-letting is feasible. I feel very little doubt that if we are in earnest in disallowing the sub-lease of the occupancy right it is quite possible to devise means to give effect to this intention.

The 6th March 1880. H. L. HARRISON.

Addendum to MR. HARRISON'S *Note dated 6th March 1880.*

IT might perhaps be inferred from the above note that I would advocate the return to a share of the gross produce as the best standard of the 'fair and equitable' rent which has to be determined in the case of the occupancy ryot. This, however, is not my opinion, and I wish therefore to add a few words in explanation of my views on this point.

2. Undoubtedly the old claim of Government extended to a share of the gross produce

and this is what was delegated to the zemindars (so far as anything definite was delegated at all) at the Permanent Settlement. If therefore we wish to place the zemindars in the same position in 1880 as they held in 1793, the object would most faithfully be obtained by authorizing them to take the same share of the gross produce now as was the rule then. There are, however, three objections to this course, any one of which seems to me to be fatal to it:—

(1) There is no equity in reverting to this rule unless we give them *the same* share as they then had, and this cannot be done.

(2) A share in the gross produce, though a very natural, is an erroneous and altogether vicious standard of a fair and equitable rent.

(3) The events of the 70 years succeeding the Permanent Settlement virtually abrogated this standard, and Act X gave legislative sanction to its abrogation. It is not necessary to undo the work of Act X, and in the present case altogether inexpedient to do so.

3. Obviously if any share in the gross produce should be given to the zemindars *on the ground of principle*, and as a return to the old order of things, it should be the same share as they were entitled to in 1793. As a *practical expedient* no doubt any share might be selected, but then, if the standard is a bad one, it should not be adopted at all on *practical* grounds. It is only as a principle of equity that it need be considered, and there is no equity in confiscating any portion of the share which rightfully belonged to the zemindar at the Permanent Settlement. Now, not only would it be very difficult to ascertain what this share was, but so far as it can be ascertained, it would involve sheer ruin to the great body of the occupancy ryots and drive lands out of cultivation. The most authoritative statement on the subject of the amount of the share belonging to Government is that it was three-fifths, and a rent equal to three-fifths of the gross produce is, I am sure, more than the great bulk of the arable land in Bengal can now afford to pay. At the time of the Permanent Settlement it seems to me overwhelmingly probable that the customary share of the produce due to the State was the real basis of the very intricate system by which the pergunnah rates were from time to time determined, and we also know on the authority of Holt Mackenzie that the pergunnah rates were generally ruinous to the ryots.

4. I have already expressed an opinion that the impossibility of the ryots paying the pergunnah rates (especially if consolidated with the existing abwabs) was one of the potent causes which enable the zemindars to bring the ryots under their entire control after 1793; and this is what would happen again if their claims were to be regulated by the same standard now. Differing entirely in this respect from Mr. O'Kinealy and Mr. Mackenzie, I am confidently of opinion that if we try to protect the ryots now by the same *standard of rent* (I do not of course mean at the same money rental), but the same produce equivalent by which they were protected at the Permanent Settlement, the protection will prove as nugatory now as it did then.

5. (2) The standard, however, of a gross share of the produce is altogether faulty, and therefore, except on the ground of equity, a very bad one to adopt. The only true standard of a fair and equitable rent is what the land can afford to pay, and this in no way varies with the produce. A share in the gross produce is a very favourable rule for the more fertile lands, but a very unfavourable one for those that are less fertile. This depends entirely on the very simple principle that, while the ryot who cultivates the less fertile land has as large an appetite as the one who cultivates the more fertile lands, the latter do not ordinarily cost more to cultivate than the former. Thus, supposing that 10 beeghas of land producing 8 maunds of paddy each in an average year can afford to pay half the produce as rent. This means that the remaining 40 maunds will, according to the laws of supply and demand as then and there in operation, furnish a sufficient cultivator's remuneration for the labour, expense, and risk of cultivation. But if so, the same amount of land producing on an average 5, 6, 10 or 12 maunds per beegha could afford to pay 10 maunds, 20 maunds, 60 maunds, or 80 maunds' rent, leaving the same cultivator's remuneration as before, and this is the rental towards which the amount paid for each of these holdings would tend if left to the unrestricted operation of natural laws. But by the rule of dividing the produce the rental would be 25, 30, 40, 50 and 60 maunds, instead of 10, 20, 40, 60 and 80 maunds; the result would be that the occupancy ryots of the two last plots would have a proprietary interest in them worth 10 maunds and 20 maunds respectively per annum. The occupiers of the third plot would be able to cultivate, but would have no proprietary interest in his holding at all. The occupiers of the first two plots would be unable to cultivate and would throw up their holdings.

6. It is in this last respect that the share of the gross produce rule operates so very fatally. If the landlord insists on his claim, all the poorer lands are thereby thrown out of cultivation. The landlord, however, is often obstinate, often fearful of injuring his rent-roll elsewhere if he gives way, and therefore he stands out and the land remains uncultivated: and yet it is land which could afford to pay a lower rate of rent. In the instances above given all lands producing between four maunds and eight maunds of paddy per beegha could afford to pay some rent, but if the half-produce standard were insisted on, they would all be left uncultivated. I know myself a large tract of arable land some five miles by two miles in extent in the Midnapore district which has been thrown out of cultivation for many years because by change in the course of the rivers its productiveness had been affected. It had been very fertile and the local rate was Rs. 3-8 per beegha. The putnidar insisted on obtaining this rent, and the land could not pay it. I learnt on enquiry that if he would reduce his demand to Re. 1-8 per beegha the whole area would be at once brought under cultivation. If any gross produce standard is adopted, either it must be a most unfair and inadequate rent for the superior lands, or it will, if claimed, throw a large quantity of inferior land out of cultivation.

7. (3) During the 70 years which succeeded the settlement the produce standard was lost sight of in the greater part of the Lower Provinces. I conceive that the process by which this went on was, in truth, the converse of that by which the share of gross produce rule was first established, then the State commuted its supreme proprietary right to all the rent which the land could afford to pay to a definite share of the gross produce. The zemindars received this right to a share of the gross produce from the State, and gradually and insensibly, partly by an abuse of their power, partly by the force of circumstances, partly by the inability of the ryots to pay the legalised rates, reconverted it into the general proprietary right to receive the full normal rental of the land from all except a few privileged ryots. I doubt whether the change is on the whole to be regretted, but anyhow Act X by fixing a fair and equitable rent as the standard in lieu of a share of the gross produce has ratified it, and it is unnecessary and unwise for us to go back to the old defective rule.

8. What the authors of Act X meant by a fair and equitable rent I have already shown —the market rent such as the land can afford to pay—and this I am most firmly convinced is the only solid ground on which we can base it, and the only true standard by which we can gauge it. Give the occupancy ryot a rent less by a certain percentage than the market rent, or make him pay the full market rent, whichever you prefer, either will work; but unless we wish our work to prove futile, and worse confusion than ever in determining rents to arise out of it, it is by the standard of the rent which the land can afford to pay, and by that standard only that the revenue officers who have to fix a fair and equitable rent on ground No. 1 must be guided.

H. L. HARRISON.

Note by Mr. O'Kinealy on enhancement, dated 16th June 1880.

The views of the members of the Committee in regard to the proper manner of dealing with the question of enhancement are so different that I purpose putting down briefly what I consider to be the relation which has existed and does exist between landlords and tenants in Bengal, since it seems to me that, if we get at a sound conception of that relation and see the various changes it has undergone, we shall have, to a certain extent, reduced the difficulty of our task. At the outset I may say that I will not, as Mr. Field conceives himself bound to do, confine myself solely to the Regulations; but shall make use, as indeed he himself has done, of other stores of information, whenever I may deem them of use in guiding me to the true intention of the Legislature. In short, I shall not start by assuming as a conclusion that the Regulations are so easy, so simple, that a proper interpretation of them can be arrived at with so little difficulty that I shall not have any occasion to appeal to any authorities. But I prefer to follow the pratice of Chief Justice Coke, Lord Westbury, the present Master of the Rolls, and noteably the Judges in deciding the Great Rent Case, who quoted from books and pamphlets of every kind, I may say of every weight and of every date, from the *Ain Akbari* down to the Board's rules. In passing, I would note a few, indeed not very important, matters in regard to which I am inclined to differ from Mr. Field. For instance, he considers that, though the *Wealth of Nations* was published before the Permanent Settlement, it is impossible to believe that the authors of that measure had read it. I have not, so far as I have searched, succeeded in finding the name of Adam Smith in the official papers connected with that settlement; but at page 7 a reference is made to the intelligent author of "An inquiry into the Nature and Causes of the *Wealth of Nations* which is the correct title of Adam Smith's book, though not that usually printed on the cover; and at page 192 of Harrington's Analysis will be found a letter from Lord Cornwallis, and dated 1879, in which he discusses the writings of Adam Smith and Sir James Stewart in a manner that shows he possessed a knowledge of political economy such as would be creditable to a very advanced student at the present day. Neither were the authors of the Decennial nor of the Permanent Settlement ignorant of the objection to fixing revenue payments in money, as Mr. Field seems to imagine. Indeed, they fully anticipated a fall in the value of silver, though probably not to the extent which has actually occurred, and foresaw that this would be in favour of the zemindars. Nor in my opinion, with the greatest respect for Mr. Field's contention in his note of the 13th January last, did Mr. Trevor, in the extract there quoted from his judgment in the Great Rent Case, refer to the rights of ryots in estates not sold for arrears. He appears to me to have, as he says, referred only to the sale laws, and to have simply stated the existence of a doctrine that a purchaser under them could enhance at discretion. Nor do I understand him to declare that such doctrine was law. Whether it was so or not I shall show afterwards.

Equally favourable to the contributors is the probable alteration in the value of silver, for there is little doubt that it will continue to fall, as it has done for centuries past, in proportion as the quantity drawn from the mines and thrown into circulation increases. If this be admitted, the assessment will become gradually lighter, because, as the value of silver diminishes, the landholder will be able upon an average to procure the quantity which he may engage to pay annually to Government with a proportionately smaller part of the produce than he can at present.—*Minute of Lord Cornwallis, 3rd February* 1790, *paragraph* 13.

The matters I now propose to discuss are—

(1) The interest of a proprietor under the Permanent Settlement.
(2) His relation to his tenants in regard to eviction and enhancement.
(3) The interest of purchasers at auction and patni sales.

Before the Permanent Settlement the nature of the proprietary right possessed by zemindars, or the nature of the proprietary right which should be conferred on them if, as was held by some, they possessed none, was as much disputed as it has been since they were formally declared to possess a vested interest in the soil.

In 1769 the President appointed, under the title of supervisors, Collectors in each province or district to report on the state of the lands and the amount of revenues: in short, to write a history of the country. One of the great objects then in view was to draw up an account of all the public and private collections made from the people, and the supervisors were commanded to prepare a *hustabood* of these collections, and to transmit it with such annexed remarks, observations, and proposals as might be deemed conducive to the improvement of the lands, the contentment of the ryot, the extension and relief of trade, the increase and encouragement of any useful manufacture or production of the soil, and the general benefit and happiness of the province in every consideration and point of view.

Rev. Reg., 1769.

This Regulation, which appears to be the first of its kind, sets forth that the President and the other members of Government had come to the conclusion that the ryots and talookdars had been treated unfairly, and even harshly, by the zemindars. They declared that the zemindars had, in dealing with the ryots, exceeded the bounds of moderation, had taken advantage of the personal attachment of the people, taxed the poor and industrious tenant beyond the established rates, had loaded him with cesses; and that there was just cause for supposing that they had illegally, without foundation of right or colour of pretence, laid hands on some of the ryots' holdings and turned them into *nij-jote*. This reign of violence they declared should cease, and the supervisors were directed to proclaim as much to the ryots.

They said: "Among the chief effects which are to be hoped for from your residence in that province, and which ought to employ and never wander from your attention, are to convince the ryot that you will stand between him and the hand of oppression, that you will be his refuge and the redresser of his wrongs; that the calamities he has already suffered have sprung from an immediate cause, and were neither known nor permitted by us; that honest and direct applications to you will never fail of producing speedy and equitable decisions; *that after supplying the legal due of Government he may be secure in the enjoyment of the remainder;* and, finally, to teach him veneration and affection for the humane maxims of our Government."

And, again, to a somewhat similar effect: "The ryot should be impressed in the most forcible and convincing manner that the tendency of your measures is to his ease and relief; that every opposition to them is riveting his own chains and confirming his servitude and dependence on his oppressors; that our object is not increase of rents or accumulation of demands, but solely by fixing such as are legal, explaining and abolishing such as are fraudulent and unauthorized, not only to redress his present grievances, but to secure him from all further invasions of *his property*."

"A third and equally important object of your attention under this head is to fix the amount of what the zemindar receives from the ryot as his income or emolument, wherein they generally exceed the bounds of moderation, taking advantage of the personal attachment of their people, and of the inefficacy of the present restrictions upon them, since the presence of the aumil more frequently produces a scene of collusion than a wariness of conduct. When the sum of the produce of the land and of each demand on the tenant is thus ascertained with certainty, the proportion of what remains to him for the support of his family and encouragement of his industry will clearly appear and lead us to the reality of his condition.

"Amongst the chief effects which are hoped for from your residence in that province, and which ought to employ and never wander from your attention, are to convince the ryot that you will stand between him and the hand of oppression; that you will be his refuge and the redresser of his wrongs; that the calamities he has already suffered have sprung from an intermediate cause and were neither known nor permitted by us; that honest and direct applications to you will never fail producing speedy and equitable decision; that after supplying the legal due of Government he may be secure in the enjoyment of the remainder; and, finally, teach him a veneration and affection for the humane maxims of our Government."—*Rev. Reg.*, 1769.

"The truth cannot be doubted that the poor and industrious tenant is taxed by his zemindar or collector for every extravagance that avarice, ambition, pride, vanity, or intemperance may lead him into over and above what is generally deemed the established rent of his lands. If he is to be married, a child born, honors conferred, luxury indulged, and nuzzurannas or fines exacted even for his own misconduct, all must be paid by the ryot. And, what heightens the distressful scene, the more opulent who can better obtain redress for imposition, escape, while the weaker are obliged to submit."—*Rev. Reg.*, 1769.

"Besides these advantages which the zemindar possesses by the secret appropriation of land and has secured to himself by partial *hustaboods*, he has an originally allowed title to the freehold of some lands, and to the enjoyment of some perquisites; but abuses have crept alike into them all. The meaning and intent of his being indulged with such exclusive possessions was to supply his family with the necessaries and conveniences of life. Under the name of nij-jote and nankar, one spot was to yield him rice, another was allotted to him as pasture; a particular tank was to afford him fish and water; and in like manner, distinct spots were given up to him for every distinct article of consumption. Though this indulgence was confined to this purpose only, there is just cause for supposing that he has extended his claims and availed himself of opportunities to lay his hands on the revenues of Government, and on the property of the ryots, where he has no foundation of right nor color of pretence."—*Rev. Reg.*, 1769.

In 1772 the Company determined to stand forth publicly in the character of dewan, and on the 14th of May passed a public regulation for the settlement and collection of revenue, which was directed to be translated into Bengali and Persian and circulated in order that the intentions of Government should be made clear to the people. The land revenue was farmed for five years. The farmers were bound to afford "the usual and necessary aids of *tuccavi* to the ryots;" they were prohibited from receiving larger rents than the stipulated amounts, or to levy any cesses; and the supervisors, under the name of Collectors, were directed to prepare rent-rolls of each farm according to the order in which it stood in the pergunnah, to which rolls the public might have free access.

Rev. Reg., 1769.

"That the farmer shall not receive larger rents from the ryots than the stipulated amount of the pottah on any pretence whatsoever, and that for every instance of such extortion the farmer, on conviction, shall be compelled to pay back the same which he shall have so taken from the ryot, besides a penalty equal to the same amount to the Sircar; and for a repetition or a notorious instance of this oppression on his ryots the farmer's lease shall be omitted.

"That the farmer's payments to Government shall in like manner be ascertained and established and no demand be made upon them above what shall be expressed in the doul or rent-roll delivered them with their lease.

Before the expiration of this settlement, the Governor General in 1776 established a Board (which was placed under his immediate control) for the purpose of determining, with

"That no mathoots or assessments under the name of mangun, bauri, gundi, sood, or any other abwab or tax, shall be imposed upon the ryots; and that those articles of abwab which are of late establishment shall be carefully scrutinized and at the direction of the Committee abolished, if they are found in their nature to be oppressive and pernicious."—*Settlement Reg.*, 1772.

a view to the next settlement, the value of the lands, and for that purpose to digest the materials already in existence, and collect such others as might be considered necessary. He said: "Besides the immediate duty of this office, which I have above described, and which I suppose to be indispensably necessary and essential to the formation of an equal settlement, many other points of enquiry will also be useful to secure to the ryots the *perpetual and undisturbed possession of their lands, and to guard them against arbitrary exactions.* This is not to be done by proclamations and edicts, nor by indulgences to zemindars and farmers. The former will not be obeyed unless enforced by regulations so framed as to produce their own effect without requiring the hand of Government to interpose its support; and the latter, though it may feed the luxury of the zemindars or the rapacity of the farmers, will prove no relief to the cultivator, *whose welfare* ought to be the immediate and primary care of Government."

Consultations, Revenue Department, 1777.

This Board laid down the plan of the settlement for 1778. In the rules which they drew up and transmitted to the local councils for their guidance, the zemindars are throughout described as "proprietors;" but though this is the case, it does not appear from the passages above quoted that Government ever intended, when it recognised and settled with the zemindar as "proprietor," to deprive the ryot of the perpetual and undisturbed possession of his lands, or the enjoyment of the remainder of his produce after he had satisfied the Government demand. They who are acquainted with the papers of those times will remember that opinions underwent many and marked changes as to the persons who should be considered the real owners, whether the ryot, the zemindar, or the State; but from the time when the zemindar was treated as proprietor, both zemindars and farmers were prohibited from arbitrarily dispossessing the ryots.

Letter of the Governor General, dated 30th March 1781.

In 1781 the system of administration was changed, provincial councils were abolished, and their duties was transferred to the Committee of Revenue at Calcutta. This Committee drew up a plan of a settlement with the zemindar which was approved of by the Governor General. In forwarding his sanction he expressed a desire to *afford every relief and ease both to the ryot and the zemindar consistent with, and conformable to, the ancient constitution of the country.* A similar plan was followed in subsequent years; the position of the ryot was not forgotten; and in 1787 Collectors were specially directed to give their most unremitting attention to ascertaining the rules and rates of the ryot's assessment, and to endeavour to fix upon some mode by which these might be regulated on general, fair, and ascertained principles.

Regulation for the conduct of Collectors, 1787, section 35.

This brings me down to the correspondence between Sir John Shore and Lord Cornwallis relating to the Permanent Settlement of Bengal, and before entering on it I will sum up what appears to me to be the true position of affairs. We have—

(1) a declaration by Government that the zemindars and farmers had oppressed the ryots;

(2) a public declaration by Government that it did not intend to enhance rents but to fix such as were legal on a permanent basis; to secure the ryots in the enjoyment of their property against all oppressions by zemindars or farmers; and that the residue of the produce, after satisfying the Government demand, should be retained by the ryot for the support of his family;

(3) a declaration by Government that it was necessary to secure the ryots in the perpetual and undisturbed possession of their lands, and to guard them against arbitrary exactions;

(4) a declaration by Government that there was no foundation of right, no colour of pretence for the ejectment of ryots;

(5) and, at the same time, a description and recognition of the zemindar as proprietor. The nature of his proprietary rights depended on the constitution and customs of the country, as expressed in the preceding paragraphs.

The discussion which arose before the Permanent Settlement exhibited a great divergence of opinion in regard to the persons with whom the settlement should be made. But when Lord Cornwallis declared that if the zemindar was not to get a vested interest in the soil, some other person must, the discussion was reduced to a much smaller compass and became narrowed into deciding who had the best right of settlement, and what power should be granted to him. The zemindar was selected. Then arose the question as to his power, his legal relations towards the ryots; could he dispossess them, enhance their rents at his discretion?—indeed, the very questions that now occupy our attention. Mr. Shore, who all along had contended for the view—indeed assuming it in all his

Papers, page 35.

Although, however, I am not only of opinion that the zemindars have the best right, but from being persuaded that nothing could be ruinous to the public interest as that the land should be retained as the property of Government, I am also convinced that, failing the claim of right of the zemindars, it would be necessary for the public good to grant a right of property in the soil to them, or to persons of other descriptions. I think it unnecessary to enter into any discussion of the grounds upon which their right appears to be founded, and this is the most effectual mode for promoting the general improvement of the tenantry, which I look upon as the important object for our present consideration.—*Minute of Lord Cornwallis of* 1789, *papers, page* 35.

2, Harrington, p. 445; 5th Reg., pp. 205, 379, 383, 385.

writings—that the zemindars were the proprietors of the soil with very extended rights, though not the same rights as in England, objected to a Permanent Settlement on the grounds that the rights of all parties, from the zemindar to the ryot inclusive, were only imperfectly understood and defined; so much so that it was uncertain whether a settlement of that nature might not lead to a diminution of the revenues of Government or to a confirmation of oppressive exaction. Moreover, some interposition between the zemindars and their ryots seemed to him absolutely necessary; for, if the zemindars were declared proprietors, they would resent any interference of Government—any direction limiting the amount of revenue they could assess or prescribing the terms on which they should let their lands to the ryots—as an infringement on the rights of landlords to do as they pleased with their own. He preferred a settlement for ten years.

13. The necessity of some interposition between the zemindars and their tenants is absolute, and Government interferes by establishing regulations for the conduct of the zemindars, which they are to execute, and by delegating authority to the Collectors to enforce the executions. If the assessment of the zemindaries were unalterably fixed, and the proprietors were left to make their own arrangements with the ryots without any restrictions, injunctions, or limitations, which, indeed, is a result of the fundamental principle, the present confusion would never be adjusted.

14. The interference, though so much modified, is in fact an invasion of proprietary right, and an assumption of the character of landlord which belongs to the zemindar, and that we have a right to regulate the terms by which he is to let his lands to the ryots, as it is to connect the avowal with discretionary and arbitrary claims. If the land is the zemindar's, it will only be partially his property, whilst we prescribe the quantum which he is to collect, or the mode by which the adjustment of it is to take place between the parties concerned.—*Mr. Shore's Minute, 8th December 1789.*

This view was not only not approved of by the Governor General, it was disapproved of by him, and his disapproval obtained the support of the Court of Directors. Lord Cornwallis pointed out that the zemindars seemed indifferent as to their proprietary right, so long as they got a certain percentage on the rents; that they had been dispossessed in numerous instances, and often had not been paid malikhana; and that in order to simplify the demand of the zemindar on the ryot, it was necessary to fix permanently the demand of Government on the former. He further said—" Mr. Shore observes that we have experience of what the zemindars are; but the experience of what they are or have been under one system is by no means a proper criterion to determine what they would be under the influence of another, founded upon very different principles. We have no experience of what the zemindars would be under the system which I recommend to be adopted.

61. The question that has been so much agitated in this country, whether the zemindars and talookdars are the actual proprietors of the soil, or only officers of Government, has always appeared to me to be very uninteresting to them, whilst their claim to a certain percentage upon the rents of their lands has been admitted, and the right of Government to fix the amount of those rents at its own discretion has never been denied or disputed.

62. Under the former practice of annual settlements, zemindars who have either refused to agree to pay the rents that have been required, or who have been thought unworthy of being entrusted with the management, have, since our acquisition of the Dewanny, been dispossessed in numberless instances and their lands held khas, or let to a farmer; and when it is recollected that pecuniary allowances have not always been given to dispossessed zemindars in Bengal, I conceive that a more nugatory or delusive species of property could hardly exist.

63. On the other hand, the grant of these lands at a fixed assessment will stamp a value upon them hitherto unknown, and by the facility which it will create of raising money upon them, either by mortgage or sale, will provide a certain fund for the liquidation of public and private demands, or prove an incitement to exertion and industry by securing the fruits of those qualities in the tenure to the proprietor's own benefit.—*Minute of Lord Cornwallis, dated 3rd February 1790.*

"31. I agree with Mr. Shore that some interference on the part of Government is undoubtedly necessary for effecting an adjustment of the demands of the zemindars upon the royts, nor do I conceive that the former will take alarm at the reservation of this right of interference, when convinced that Government can have no interest in exercising it but for the purposes of public justice. Were the Government itself to be a party in the cause they might have some grounds for apprehending the result of its decisions.

"32. Mr. Shore observes that this interference is inconsistent with proprietary right, and that it is an encroachment upon it to prohibit a landlord from imposing taxes on his tenant, for it is saying to him that he shall not raise the rents of his estate, and that, if the land is the zemindars', it will only be partially his property, whilst we prescribe the quantum which he is to collect, or the mode by which the adjustment is to take place between the parties concerned.

"33. If Mr. Shore means that, after having declared the zemindar proprietor of the soil in order to be consistent, we have no right to prevent him imposing new abwabs or taxes on the lands in cultivation, I must differ from him in opinion, unless we suppose the ryots to be the absolute slaves of the zemindars. Every beegha of land possessed by them must have been cultivated under an express or implied agreement that a certain sum should be paid for each beegha of produce and no more. Every abwab or tax imposed by the zemindar over and above that sum is not only a breach of that agreement, but a direct violation of the established laws of the country. The cultivator therefore has, in such a case, an undoubted right to apply to Government for the protection of his property, and Government is at all times bound to afford him redress. I do not hesitate, therefore, to give it as my opinion that the zemindars neither now nor ever could possess a right to impose taxes or abwabs upon the ryots; and if, from the confusion which prevailed towards the close of the Mogul Government, or neglect, or want of information, since we have had possession of the country, new abwabs have been imposed by the zemindars or farmers, that Government has an undoubted right to abolish such as are oppressive and have never been confirmed by a competent authority, and to establish such regulations as may prevent the practice of like abuses in future.

"34. *Neither is the privilege which the ryots in many parts of Bengal enjoy, of holding possession of the spots of land which they cultivate so long as they pay the revenue assessed upon them, by any means incompatible with the proprietary rights of the zemindars. Whoever cultivates the land, the zemindar can receive no more than the established rent which, in most places, is fully* *equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit.* The practice that prevailed under the Mogul Government of uniting many districts into one zemindary, and thereby subjecting a large body of people to the control of one principal zemindar, rendered some restriction of this nature absolutely necessary. *The zemindar, however,* may *sell the land,* and the *cultivators* must pay the rent to the purchaser."

The decision of the Court of Directors was in favour of the proposal advocated by Lord Cornwallis, and ran as follows:—

"But as so great a change in habits and situation can only be gradual, the interference of Government may, for a considerable period, be necessary to prevent the landholders from making use of their own permanent position for the purpose of exaction and oppression. We therefore wish to have it distinctly understood that, while we confirm to the landholders the possession of the districts which they now hold, and subject only to the revenue now settled, and while we disclaim any interference with respect to the situation of the ryots or the sums paid by them with any view to an addition of revenue to ourselves, we expressly reserve the right which clearly belongs to us as sovereigns of interposing our authority in making from time to time all such regulations as may be necessary to prevent the ryots being improperly disturbed in their possession or loaded with unwarrantable exactions. A power exercised for the purpose we have mentioned, and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders, and, instead of diminishing, will ultimately enhance the value of their proprietary rights. Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be *a general maxim that the immediate cultivator of the soil duly paying his rent should not be dispossessed of the land he occupied.* This necessarily supposes that there were some measures and limit by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar, for otherwise such a rule should be nugatory, and in point of fact the original amount seems to have been annually ascertained and fixed by the act of the sovereign."

2, Harrington, page 188.

The Government, in virtue of its claim to a portion of its rents, considered itself entitled to the minutest information regarding the land, its produce, the rents paid by the ryots, and all transfers in their possession. The duty of the mofussil canoongoes was to record and furnish this information, and the accounts formerly kept by them were calculated to afford it.—*5th Rep., p. 204, para. 375.*

If the members of the Committee will compare the decision of the Court of Directors, as sovereign power, with the result of what I consider to have been previously determined and concluded by the Government of India, they will find that, instead of those conclusions being in any wise impugned, they were affirmed, and affirmed with a distinct declaration that if they were ever violated, it would be the duty of Government to interfere and protect the ryot. Lord Cornwallis asserted that the zemindars (who up to this time had been mere servants of the State) should be looked on as proprietors in the sense that they might sell or alienate the soil, and that the ryots would be bound to pay rent to the purchaser; but he distinctly denied them the right to eject or to rack-rent, as one prohibited by the established customs of the Mogul Empire; and this view, which was merely a declaration of the common law, received the full approval of the ruling sovereign power.

I trust my reason for making these extracts bearing on the relations of the landlord and tenant immediately before the Permanent Settlement will not be misunderstood. I am perfectly well aware that at all times, and in all classes and peoples, there is, and must be, a mixture of good and bad; but I wish the Committee to do what, I conceive, every man who wishes to come to a right conclusion on the effect of the Permanent Settlement ought to do, *viz.*, put himself as much as possible in the position of the persons passing it, and then, bearing in mind the language that would be used by persons placed in such a position, decide what was meant to be conveyed by the Regulation. I am aware that Mr. Field has adopted in this particular case a different course and has, in a fresh endeavour to discover the intention of the Legislature, refused to look at anything which has been said or written, or discussed before the Regulations were passed, even though it was said or written or discussed by the members of the Legislature itself. But, as I said before, I am not sure of my opinion, not certain of the intention of the Legislature, and hence I have adopted the course which, though more laborious, is, owing to my inability to as clearly perceive the intention of the Legislature as he thinks he can, to me more satisfactory; and I am the more inclined to follow it since I see that it has led him into some slight misconception of the knowledge which the framers of the law possessed of political economy.

In the extensive plains of India a large proportion, estimated in the Company's provinces at one-third by Lord Cornwallis, at one-half by others, and by some at two-thirds of land capable of cultivation, lies waste, and probably was never otherwise. It became, therefore, of importance to the native Governments, whose principal financial resource was the land revenue, to provide that as the population and cultivation should increase, the State might derive its proportion of advantage resulting from this progressive augmentation. Whatever might be the motive of its introduction, the rule for fixing the Government share of the crop had this tendency. This rule is traceable as a general principle through every part of the Empire which has yet come under the British dominion; and undoubtedly had its origin in times anterior to the entry of the Mahomedans into India. *By this rule the produce of the land, whether taken in kind or estimated in money, was understood to be shared in distinct proportions between the cultivator and the Government.* The shares varied when the land was recently cleared, and required extraordinary labour, but when it was fully settled and productive, the cultivator had about two-fifths and the Government the remainder. The Government share was again divided with the zemindar and the village officers, in such proportion that the zemindar retained no more than about one-tenth of this share, or little more than three-fiftieth parts of the whole, but in instances of meritorious conduct the deficiency was made up to him by special grants of land denominated *mouncour* (or substance).—*5th Rep., p. 16.*

The difference between us is one more of procedure than of principle, and I would willingly adopt his method if I could do so with satisfaction to myself.

Mr. Field gives an accurate and elaborate analysis of Regulation VIII of 1793 in his note on enhancement. In it I concur, except in so far as he concludes that sections 53 and 54 of the Regulation referred to ryots. He frankly admits, as might be expected that he arrives at this conclusion with reluctance, and that it is difficult to accept it if the legislators of that period could be considered to be conversant with the use of legal terms or knew the proper meaning of such words as "letting," and "demise," in a word if they could be called lawyers, and his conviction is that they could not in fairness be so described. I, on the other hand, am inclined to believe that the illustrious framers of the settlement possessed an adequate share of legal as well as economic knowledge, and that Mr. Field has himself fallen into error from not considering the previous decisions arrived at by Government. The sections expounded by him run as follow:

"LII.—The zemindar or other actual proprietor of the land is to let the remaining lands of his zemindary or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it, and all sums received by the actual proprietor of land or any farmer of land, of whatever description over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid by a penalty of double the amount. The restrictions prescribed and referred to are the following:—

"LIII.—No person contracting with a zemindar, independent talookdar, or other actual proprietor, or employed by him in the management of the collections, shall be authorized to take charge of the lands or collections without an amulnamah or written commission signed by such zemindar or other actual proprietor."

Mr. Field considers that section 52 refers to and includes the letting, or rather re-letting, of lands to ryots already in possession—an opinion which I have seen stated somewhere to have been advanced by Mr. Justice Phear. I am, I regret to say, of a different opinion. The section appears to me to apply to contracts of letting by a zemindar to farmers in connection with lands already in possession of ryots. The reasons which induce me to hold this opinion are these. Section 51 refers to lands which are held by dependent talookdars; section 52 would naturally follow if the meaning I attach to it is correct, and its subject-matter would properly fall between lands held by talookdars which are referred to in the section 51, and lands held khas which are mentioned in section 54. The section itself, too, presupposes existing ryots; and finally, the letting is with the proprietor—no inferior tenure-holder could be lessor—and, subject to prescribed restrictions, not one of which could by any use, or even ordinary misuse of the words, be extended to ryots. The lessee takes "charge", not possession, of the lands; he could not take possession, and for the best of all possible reasons that the lands had already been occupied. Mr. Field appears to have been led into his, as I hold, erroneous construction by taking a wrong view of the words "prescribed restrictions" mentioned in section 52. He looks upon them as extending over a series of sections; but, unless the printing of every authorised copy of the Regulations I have ever seen is wrong, they are included in and cease at the end of the section 53, and I would press upon the members the necessity of referring to the text. It is clear, as has been pointed out to me by Mr. Mackenzie, that Mr. Field in his edition of the Regulations has followed a mode of punctuation not justified by the authorized text, which completely changes the sense of the sections, and gives a colour of validity to his theory of enhancement. It would seem, therefore, that a strong, if not the strongest, support for the theory he has advanced rests solely on a printer's error.

The term "proprietor," as far as the Permanent Settlement is concerned, means zemindars, talookdars, chowdries, mortgagees and in cases of dispute, the party in possession. Whatever rights were given by the settlement were rights given equally to all these persons, and this is worthy of remembrance, because many people think, when they hear the person settled with called "proprietor" that the settlement gave him unlimited rights in the soil. The settlement gave the proprietor the right to sell and mortgage without the sanction of Government, the power to cancel leases in certain cases, and the great privilege of holding for ever at a fixed assessment. The remainder of the Regulation sets forth for the most part either restrictions on the proprietor's powers—whatever they were—which it was necessary to establish, with a view of guarding the under-tenantry and cultivators from oppression and of securing them in the enjoyment of their property, or rules of procedure directing how certain things should be carried out; but in matters not expressly legislated for, I think it left him in relation to persons other than the ruling sovereign almost as he was before, *i. e.*, governed by the customary or common law of the land. Regulation VII of 1799, clauses 7 and 8, bring out this clearly. They run as follows:—

The objects to which the Government directed its enquiries, as preparatory and necessary to this measure, were the past history of the districts and of the landholders belonging to them; the rights of the different orders of the latter, as they were recognized under the native Government, the existing rules by which the revenue was collected, and the ancient usages as far as they could be traced; the amount of the revenue which it would be proper, under the instructions from home, to demand from each landholder, and the regulations which it might be necessary to establish, with a *view of guarding the under-tenantry and cultivators from oppression, and of securing to them the enjoyment of their property.—5th Rep., p. 15.*

"This Regulation is not meant to define or limit the actual rights of any description of landholders or tenants which can be properly ascertained and determined by judicial investigation only, but merely to point out in what manner defaulting tenants may be proceeded against in the event of their not paying the rents justly due by them, leaving them to recover their rights, if infringed, with full costs and damages, in the established courts of justice, under the provisions already stated in this Regulation for bringing causes to a determination with the least possible delay.

"*8th.*—In like manner, in all other instances the courts of justice will determine the rights of every description of landholder and tenant when regularly brought before them, whether the same be ascertainable by written engagements, or defined by the laws or regulations, or depend upon general or local usage, which may have been proved to have existed from time immemorial."

There are other reasons in favour of the same conclusion. The Regulations in force for the settlement and collection of land revenue were "with certain modifications and restrictions," connected with the progressive nature of the settlement extended to Cuttack and to the ceded and conquered provinces. In both the zemindars were treated, as they were in Bengal, as proprietors. These settlements were subsequently provided for by Regulation VII of 1822, which contains a clear and explicit declaration of what Government considered to be the sole and only effect of a settlement. Section 4 runs as follows:—

Regulation XII of 1803, preamble.
Regulation X of 1812, preamble.

"In admitting particular parties to engage, it was in no degree the intention of Government to compromise private rights or privileges, or to vest the sudder malguzars with any rights not previously possessed by them, excepting in so far as their interest in the land, for which they may have engaged, might be improved by the limitation of the Government demand or otherwise by the resignation in their favour of rights previously vested in Government itself; or, as it may have been found necessary with a view to the punctual realization of the public dues, to vest the sudder malguzars, by special regulations, with authority of distraint, or other powers of coercion, over the under-tenants. On the contrary, it is the anxious desire of Government, and the bounden duty of its officers, to secure every one in the possession of the rights and privileges which he may lawfully possess or be entitled to possess."

This, then, is what the Legislature considered to be the meaning of its own regulations. All that it did do—all that the great founder of the settlement ever intended it should do—was to give zemindars, subject to custom, a perpetual lease of the lands at a fixed assessment and subject to the restriction of State intervention if the conditions of their leases were violated to the injury of the ryots. The law did not covertly destroy or modify the rights of private individuals who had been from the commencement of the dewany, and in pursuance of a determined purpose, governed "according to their own laws, usages, and customs in the mild spirit of the British constitution;" and ruled according to "the subsisting manners and usages of the people rather than by any abstract theories drawn from other countries, or applicable to a different state of things."

I am aware it has been asserted by Mr. Field that the most skilful solicitor could not have discovered, at the time of the Permanent Settlement, materials to prove as immemorial usage, and I refer to this assertion merely to show that I have not ignored it. I confess I cannot accept the statement as one established by facts or deducted from any cogent argument. We all know that this difficulty is not peculiar to the relation of landlord and tenant, but presents itself in all matters connected with Hindus, and whether it has been surmounted or not, I must leave to the decision of those who are acquainted with the current case law; those who are not cognisant of Indian decisions may judge of the value to be attached to such an objection by reflecting how the same difficulty has been successfully got over in England. Further, I would point out that in regard to rates of rent it seems difficult to reconcile Mr. Field's assertion with the opinion expressed by Sir John Shore in his minute of June 1789—some years before the Permanent Settlement.

"We are, therefore, called upon to endeavour to remedy evils by which the public interests are essentially injured; and by granting perpetual leases of the lands at a fixed assessment, we shall render our subjects the happiest people in India, and we shall have reason to rejoice at the increase of their wealth and prosperity, as it will infallibly add to the strength and resources of the State."—*Min., Lord Cornwallis, 3rd February 1790.*

They, therefore, directed that the settlement should be made, in all practicable instances, with the zemindar; and that, in cases of his established incapacity for the trust, a preference should be given to a relation or agent over a farmer. They apprehended the design of the Legislature was to declare general principles of conduct, and not to introduce any novel system, or to destroy those rules and maxims of policy which prevailed in well-regulated periods of the native government. With respect to the amount of the assessment, the Directors were of opinion that the information already obtained might be sufficient to enable their Government in Bengal to fix it without having recourse to minute local scrutinies, and they suggested the average of former years' collections to be the guide on the present occasion; and on this point concluded their instructions with remarking that "a moderate jumma or assessment, regularly and punctually collected, unites the consideration of our interest with the happiness of the natives and security of the landholders more rationally than any imperfect collection of an exaggerated jumma to be enforced with severity and vexation." Though the amount when determined, and on reference approved by themselves, the Directors intended should be considered as the permanent and unalterable revenue of their territorial possessions in Bengal, yet, for special reasons, they desired that the present settlement might be concluded for the term of ten years only.—*5th Rep. 1, p. 13.*

"With respect to the cultivators or ryots, their rights and customs varied so much in different parts of the country, and appeared to the Government to involve so much intricacy, that the Regulation only provides generally for engagements being entered into, and pottahs or leases being granted by the zemindars, leaving the terms to be such as shall appear to have been customary, or as shall be particularly adjusted between the parties, and in this it is probable that the intentions and expectations of the Government have been fulfilled, as no new Regulation yet appears altering or rescinding the one alluded to. It is, moreover, to be expected that the parties on experiencing the inconvenience, expense, and delay, combined with the uncertainty attendant on decisions in the newly-constituted courts of justice, will come to a reasonable agreement between themselves—the zemindars for the sake of retaining the cultivator, by whose means alone his estate can be rendered productive, and the cultivator for the sake of gaining a subsistence on the spot where he has been accustomed to reside."—*5th Rep., p. 28.*

He says :—"I suppose that the rents in Bengal may be collected *according to ascertained rates throughout two-thirds of the country*; and, notwithstanding the various abuses which I have detailed, it is evident that some standard must exist, for without it the revenues could never be collected from year to year as they have been. Exactions on one side are opposed by collusions on the other; but we may with certainty conclude that the ryots are as heavily assessed as ever they were."

By the common law of India the ruling power was entitled to a *certain* and *only a certain*, proportion of the produce, either in money or kind, of every beegah of land known as "the legal due of Government," unless it transferred its right for a term or in perpetuity, or limited the public demand upon the whole lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, whilst he continued to discharge the latter. In pursuance of that law Government limited its demand in perpetuity by the Permanent Settlement. It seemed to believe that the zemindars having been assured that they would not be enhanced, but would be allowed to enjoy exclusively the fruits of their own good management and industry, would exert themselves in cultivating their lands and in the improvement of their estates, in building embankments and in cutting reservoirs, in providing against the untimely cessation of the periodical rains, and even in extending cultivation so as to increase the raw produce of the country, and with it their certain share; but Government never intended to give in addition, either in whole or in part, the customary share of the ryot, which did not belong to it, and which it never even claimed. Any such idea is distinctly incompatible with the numerous laws regulating the assessment of fixed jummas on portions of estates transferred by private or public sale. Nor did Government, and for the same reason—that it was opposed to the established custom—give a power to eject; and though I admire the courage of those stronger individuals who refuse to read the correspondence connected with the Permanent Settlement, or who, by imputing ignorance to its framers, have arrived at a different conclusion—a conclusion which brands the members of that Government with having broken most solemn promises to the ryot—I am inclined to believe that I have followed a safer rule of interpretation, and that my conclusion, if not equally logical, is more in accordance with human nature, with the character of the statesmen concerned, and the probabilities of the case.

Regulation XLIV of 1793.
Regulation IX of 1793, preamble.
Regulation XLI of 1795.
Regulation XLII of 1795.

Regulation I of 1793, section 7.

Regulation II of 1793, preamble.

I will now refer to a case decided in 1811 as a striking illustration confirming the opinion I hold in regard to the effect of the Permanent Settlement and the limitations on the character of the proprietary right of the zemindars as established by it. In Beerbhoom there had existed from a long time a *loha mehal*, or collections from the digging and smelting of iron, within the estate, similar to the *nimak mehal* or salt revenue. The revenues of this mehal were at the Permanent Settlement kept separate from those arising out of cultivation. Subsequently the mehal was sold, and soon after a dispute arose as to the rights of the "proprietor" of the Permanent Settlement and the purchaser. The former declared that the right to the mines and the places of manufacture followed the property in the land in which they lay; the latter that the proceeds of the mines formed one branch of revenue, that the zemindar had paid a distinct assessment on it, and that the right to the mines went with the sale of the mehal, not with the Permanent Settlement. On enquiry it was ascertained that, according to the custom of the place, the *loha mehal* had been separately assessed. The Sudder Dewany held that the proprietor could not restrain the miner, who was entitled to work old mines and open new ones according to established usage. I suppose nothing could bring out in stronger relief the difference between rights of property in England and India than this case. The common law of the land carved a perpetual mining lease out of the proprietary rights of a landowner as viewed from the standpoint of English law. *

* The cultivators of this country have followed, and now do follow, their own customs. They have very few rights founded on contract, and have never, so far as I know, desired a pure contract system, or to reach what I have seen somewhere described as the Englishman's paradise of buying and selling, and whoever wishes to understand or legislate for them properly should guard against being carried away by English ideas of property. For the same reason I would most strongly deprecate the use of terms which ought not to be applied to the cultivators of this country. The cultivator is, for instance, frequently described as a mere squatter, and in this spirit I have heard it gravely argued that he should not be allowed to build a substantial house; that since the law even now allows those who do not possess a right of occupancy something more than the cost of producing their crops, nothing further should be done, and that the idea of protecting such a ryot from arbitrary ejectment was "monstrous."

In regard to the effect of modern legislation on the Permanent Settlement, there is, I conceive, no real tangible difference of opinion among the members of the Committee. We all admit that Act X has not interfered with any rights of either landlord or tenant which are based on custom or prescription; that it was, if I may say so, not an exclusive, but an additional, enactment. The effect, if any, on the customary rights of the people, has been of an indirect nature, and has arisen from the ignorance of the poorest and most ignorant class of the people, the ryots, who, not acquainted with our mode of legal construction and too poor to pay for the information, have generally viewed it as a complete code in itself, and no member of the Committee, no one desirous of upholding the good faith of Government or the honor of England, will object to our declaring that this is an error. Under these circumstances I am of opinion that the landholders of this country must now, as before and since the Permanent Settlement, base any claim they may advance either on the words of some law or on the custom of the locality; and that the very first step towards any certainty in ascertaining the rights of both parties is to strictly guard against the idea that proprietary rights in this country are co-ordinate with, or even conform in any detail with, those in England, and against the erroneous application of English law notions; which, as Sir Erskine Perry long ago pointed out, caused Niebuhr to observe "that Lord Cornwallis' scheme was one of the most unfortunate but best-intentioned plans that ever ruined a country." No large number of men will assert that a Hindu zemindar can create an estate tail or that a Muhammadan landowner can will away his estate; but nine out of ten ordinary Englishmen will not hesitate to say that a tenant holding without any specified term, on payment of a yearly rent—the ordinary description of a *khudkhast* tenant—can always be dispossessed after notice. And yet, to my mind, the error in both cases is the same, and springs from the same confusion of ideas regarding the rights of property in England and India—a confusion which has led at least one gentleman on the Committee to conceive that ryots in Bengal should not be allowed to build, even if the building improved their holdings, because a landholder in England, in order to evade the Poor Rate, had to his knowledge, prevented his labourers from dwelling on his lands; and has also led the Committee to devise a new statutory form of forfeiture, which admittedly has never existed in Bengal: indeed, I might add, does not now exist in any country on the surface of the globe. The Court of Directors, in the height of their power, declared, as I have already pointed out, their pride—a pride shared in by Parliament—in having legislated for the people in the spirit of their customs rather than according to abstract theories drawn from other countries or applicable to a different state of things; and after this expression of opinion I would deprecate legislation which is not founded on any abstract theory, and is foreign to the habits and customs of every nation, unless it can be supported on the ground of absolute necessity or in order to prevent some great evil: and such an evil I cannot admit to be the power of a tenant to sink money in improving his holding, which not only increases the security of the landlord's rent, but also the value of the reversionary interest.

Pottahs to the *khudkhast* ryots, or those who cultivate the land of the village where they reside, are generally given without any limitation of period, and express that they are to hold the lands, paying the rents from year to year. Hence the right of occupancy originates; and it is equally understood as a prescriptive law that the ryots who hold by this tenure cannot relinquish any part of the lands in their possession, or change the species of cultivation, without a forfeiture of the right of occupancy, which is rarely insisted upon; and the zemindars demand and exact the difference. I understand also that this right of occupancy is admitted to extend even to the heirs of those who enjoy it.—*Mr. Shore's Minute, June 1789.*

Regulation IX, 1800, preamble.
5th Rep., p. 13.

I now turn to the powers of zemindars to enhance rates of rent.

In discussing the general powers of landlords to enhance the rents of their ryots, it is as well to bear in mind that there arose after the Permanent Settlement two classes of persons to whom special privileges were granted. I refer to those who became zemindars by auction purchases for arrears of revenue, and to those who became tenure-holders by purchase of transferable tenures sold for their own arrears. I think some of the confusion attached to the question of enhancement has arisen from not keeping distinct the rights of these different classes of persons, and I purpose for the present to confine myself to the ordinary general powers to enhance possessed by landlords.

To understand the rules laid down in Regulation VIII of 1793 it is necessary to go back a little to a period before the time of the Permanent Settlement. When supervisors were established in 1769, among the duties entrusted to them was the following:—

"A third and equally important object of attention under this head *is to fix the amount of what the zemindar receives from the ryot as his income or his emolument:* wherein they generally exceed the bounds of moderation, taking advantage of the personal attachment of the people and of the inefficacy of the present restrictions upon them, since the presence of the aumil more frequently produces a scene of collusion than a wariness of conduct. When the sum of the produce of the lands and of each demand on the tenant is thus ascertained with certainty, the proportion of what remains to him for the support of his family and encouragement of his industry will clearly appear to lead us to the reality of his condition. Among the chief effects which are hoped for from your residence in that province, and which ought to employ and never wander from your attention, are to convince the ryot that you will stand between him and the hand of oppression; that you will be the refuge and the redresser of his wrongs; that the calamities he has already suffered have sprung from an extramediate cause, and were neither known nor permitted by us; that honest and direct application to you will never fail producing speedy and equitable decisions; *that after supplying the legal due of Government he may be secure in the enjoyment of the remainder;* and finally, to back him, a veneration and affection for the humane maxims of our Government."

From this it will be seen that one of the first acts of the Company was to enquire into and attempt to determine the share of the produce of the lands, whether paid in money or kind, which the zemindar was entitled to demand as his emolument, and to promise to maintain the ryot in the enjoyment of the remainder, a promise that was fulfilled at every settlement down to and inclusive of 1793. In 1786 the zemindars were informed by Government that from 1192 their moshaira would cease, and they were called on to take the settlement and pay the regular kists of revenue. Against this they petitioned, and the very first paragraph of their petition is very suggestive. They say as follows:—

"*From the first, in the time of the ancient subahdars, the zemindars have enjoyed their zemindary russoom*, baze jumma morocha, nuzzer salamee bahal mal quorcee manna, &c. Besides these they had other sources of profit. * * * *

"7. Now Government has issued an order that, from the 1st of Maug 1192 we are to cease receiving moshaira in the usual way, and that we are to pay our revenue as the kists fall due, together with the amount of our moshaira and other allowances, directly to the treasury, and that our moshaira is to be paid on certificates. If this be the case, how can we answer for the regular payment of our revenues; how shall we be able to satisfy the mahajans; and how shall we exist ourselves? We have never seen or heard of certificates. We beg therefore * * * * to us in the way we have always enjoyed it. *If the gentlemen suppose that the general restoration of our zemindaries has opened a new source of profit or advantage to us, let them do whatever* they think proper, and continue to allow us our usual moshaira, for, unless this is restored, we ourselves and our families must perish."

It must have appeared, from what has been stated, that the inhabitants of the Company's territorial possessions, whose condition was considered to be the most improved by the introduction of the new system, were the class of landlords and zemindars. Under the native government the zemindars were liable to an annual requisition for such an amount of revenue or tribute as a minute local scrutiny of the village accounts, aided by a measurement to the land, if necessary, might warrant, leaving them simply their russoom or established proportion of the produce and their nauncaur or special grant of land, where such existed, joined with the advantage derivable from an extension of cultivation, or what might be obtained by re-letting the land in parcels to under-renters as a compensation for the trouble and risk of the charge; and subject to imprisonment, corporal punishment, and dispossession in case of failure in the performance of their engagements. If they declined entering into engagements on the plea of excessive demand, they were restricted to their allowance of russoom or nauncaur; while the land was liable to be farmed or committed to the immediate management of an officer of Government. By the terms of the perpetual settlement, no further demand is to be made upon the landholder, whatever may be the augmentation of his resources, by increased cultivation or any other means, than the amount of the jumma or revenue which he has already voluntarily engaged to pay. On the other hand, he is declared not entitled to remissions on the plea of loss from unfavourable seasons, inundation, or any other natural calamity; and in the event of his falling in arrear of the regular payment of the revenue, his land is liable to be sold in liquidation of the balance outstanding.—*5th Rep., p. 27.*

These passages give a key to the relation which the zemindars held towards their tenants. It was not by contract, but by the customary or common law of the land that the zemindar claimed his share—his *zemindary russoom* or established proportion of the produce; and when this was fixed and the zemindar was inducted into his estate after the settlement, he reverted to his previous position, and got neither less nor more than his legal allowance. On this principle, too, was malikana settled.

It is allowed that the zemindars are, generally speaking, grossly ignorant of their true interests, and of all that relates to their estates;—that the detail of business with their tenants is irregular and confused, exhibiting an intricate scene of collusion, opposed to exaction, and of unlicensed demand substituted for methodized claims;—that the rules by which the rents are demanded from the ryots are numerous, arbitrary, and indefinite; that the officers of Government, possessing local control, are imperfectly acquainted with them, whilst their superiors further removed from the detail have still less information;—that the rights of the talookdars dependent on the zemindars, as well as of the ryots, are imperfectly understood and defined;—that in common cases we often want sufficient data and experience to enable us to decide with justice and policy upon claims to exemption from taxes; and that a decision erroneously made may be followed by one or other of these consequences, a diminution of the revenues of Government, or a confirmation of oppressive exaction.—*Mr. Shore's Minute, 8th December 1789, p. 10.*

To the truth of this detail there will be no dissenting voice; and it follows from it that until the variable rules adopted in adjusting the rent of the ryots are simplified and rendered more definite, no solid improvement can be expected from their labours, upon which the prosperity of the country depends. The difficulties attending this task are allowed by all who have had experience of it; nor is much required to know, that to make an adjustment between two parties, where one fears, and each suspects the other, in a country, too, where every innovation is received with disgust and apprehension, local information, assiduity, and perseverance are indispensable requisites.—*Mr. Shore's Minute, 8th December 1789, p. 11.*

The violent oppression of zemindars, middlemen, and ryots, the arbitrary manner in which each class was treated before the British accession, had to a great extent broken in on the common law. The details of the demands were irregular and confused. Exactions and unlicensed demands on the side of the zemindars were met by fraud and deception on the part of the ryots. One of the great objects of the Permanent Settlement was to consolidate such exactions as were allowable, and to simplify the zemindar's demand.

Mr. Francis proposed that it should be made an indispensable "condition with the zemindar that, in the course of a stated time he shall grant new pottahs to his tenants, either on the same footing as his own quit-rents, that is, as long as the zemindar's quit-rent remains the same, or for a term of years, as they may agree." The former is the custom of the country. This will become a new assil jumma for each ryot, and ought to be as sacred as the zemindar's quit-rent. The pottah should be expressed in the simplest terms possible, without a single abwab or muthote; so much per beegha of land which he cultivates, varying only according to the articles of produce or quality of the soil.—*Mr. Shore's Minute, June 1789, p. 410.*

When the five years' settlement was concluded by the Committee of Circuit, several conditions were inserted in the agreements of the farmers and zemindars, calculated for the security of the Government and benefit of their tenants. Thus they were prohibited resuming lands applied to religious or charitable uses, exclusive of the original revenue land, and collecting the various impositions known by the name of bazee jumma, haldarry, moracha, and salamy. They were precluded making any new grant of bromutter,

The nature and amount of the customary dues require some consideration. They could, no doubt, be varied by the State; but, as a rule, the State, when it enhanced its demand, restricted its action to fixing the demand on the zemindar, leaving him to distribute it according to custom over the zemindari. One thing was, however, quite clear, that the zemindar possessed no right at all to enhance as long as the Government demand did not increase; or, in other words, as long as the zemindar's quit-rent remained the same, the ryot's rate of rent was unchanged. This system we found and upheld, and in accordance with it, when Government, in 1872, farmed the revenues for five years, the farmers could not enhance during the period of their farms, and were entitled only to collect according to the rents and authorised cesses of the foregoing year, and, where the lands were cultivated without pottahs, at the established rates. The renters, in short, possessed no power by the common law to fix the rents for a part of their term and enhance afterwards, unless the State demand varied.

&c., they were directed to collect from the cultivated lands of the ryots in the mofussil the original jumma of the last and foregoing year, and abwab established in the present, and on no account to demand more where the lands were cultivated without pottahs by the ryots; they were to collect according to the rates of the pergunnah. By another clause of the rates of the former malguzary, the pottah for the present year's cultivation was to become the standard of the collections from the ryots, and penalties were enacted for a breach of this. The receipt of any nuzzer, salamy, parbuny was prohibited.—*Id. p. 450.*

Much less did they ever conceive or demand that they might enhance any tenant at their discretion. This idea is of very recent origin, and has sprung from the extraordinary use, if not the abuse, of text-books on the common law of relation of landlord and tenant in England—a relation which has never had a parallel in this country. Lord Cornwallis expressly repudiates the existence of any such powers, and in the following words:—"No zemindar claims a right to impose new taxes on the land in cultivation." And, again, "I do not hesitate to give it as my opinion that the zemindars neither now nor ever could possess a right to impose taxes or abwabs on their ryots."

I now come to the nature of the tenures and the engagements entered into between the cultivators and the renters, as they were called.

In Bengal there were two fundamental types of tenures to which all the others might be referred. The *first*, where the rents were calculated on an original rate or *assul*, fixed with regard to the quantity of the land and its produce, with an addition of cesses subsequently imposed; it prevailed over two-thirds of the province. The *second*, where a fixed sum was paid for a specified quantity of land at so much a beegha, without any other distinction. The first form of tenure existed in Burdwan, Moorshedabad and Nuddea: the second form, in part of Chittagong and other districts. In general, throughout Bengal the rents were paid in money, and the customs of dividing produce was, as is even now the case, confined chiefly to Behar: in Bengal it was confined to khamar lands. At the same time it should not be forgotten that the variations in the demand on the ryots were greater in Bengal than in Behar.

There are two fundamental distinctions in the tenures of the ryots, into which almost all the variations might be resolved; the first, when the rents are calculated upon an assul, or original rate, with an addition of the cesses subsequently imposed.

The imposition of the cesses is generally discretional; they differ in names, numbers and amount throughout the country; their rates are variously regulated at so much per rupee, or according to the number of months and by other distinctions. The proportion of each is not calculated upon the assul only, but generally upon the aggregate of that and the preceding cesses, and so on progressively.

The second is, where a fixed sum is paid for a specific quantity of land at so much per beegha without any other distinction. The rate in the first instance may be settled with a due regard to the quantity of the land and its produce. The ryots holding under this form are compelled to stand to all losses to pay for the land whether cultivated or not, and have no security against demand but desertion.

In general, throughout Bengal, the rents are paid by the ryots in money, but in some places the produce is divided in different proportions between the cultivator and zemindar. This custom chiefly respects lands under the denomination of khamar.—*Mr. Shore's Minute, June 1789, p. 222-225. See also para. 405.*

The custom of dividing the produce of the land in certain proportions between the cultivators and the Government or the Collector who stands in its place is general, but not universal, throughout Behar. In Bengal the custom is very partial and limited.—*Mr. Shore's Minute, September 1789, para.* 285.

I do not observe in the correspondence of the Collector any specific rules for the security of the ryots. I well know the difficulty of making them, but some must be established. The great point is to determine what is and what is not oppression that justice may be impartially administered according to fixed rules. In Behar the variation in the demands upon the ryots are not so great as in Bengal. The system of dividing the produce affords a clear and definite rule wherever that prevails; the Regulations need not be so minute as those I proposed for Bengal.—*Mr. Shore's Minute, Sept. 1789, p. 145.*

I have pointed out that by the common law of the land the revenue renters or zemindars had no power to change the amount legally due from the ryot to the State as long as the State demand was not varied. Every abwab or tax imposed on the rent was not only a breach of the relation of landlord and tenant, but a direct violation of the established laws of the land. So that where the rates of rent were determined the cultivator had a remedy against enhancement by complaining to the Government officers, who were bound to afford him redress, and he was still further protected if he held under a pottah, since this document specified the rent and the authorized cesses, and thus afforded a means of proving a valid defence in case of illegal demands.

It is evident, therefore, that the only mode of remedying these evils, which is likely to be attended with success, is to establish such rules as shall oblige the proprietors of the soil and their ryots, who alone possess the requisite information for this purpose, to come to a fair adjustment of the rates to be paid for the different kinds of lands or produce in their respective districts. Mr. Shore's proposition that the rents of the ryots, by whatever rule or custom they may be demanded, shall be specific as to their amount; that the landholders shall be obliged, within a certain time, to grant pottahs or writings to their ryots, in which this amount shall be inserted; and *that no ryot shall be liable to pay more than the sum actually specified in his pottah if duly enforced by the Collector*, will soon obviate the objection to a fixed assessment, founded upon the undefined state of the demands of the landholders upon the ryots.—*Minute of Lord Cornwallis, 3rd February 1790.*

Where the rates of land are specific and known, a ryot has a considerable security against exaction, provided the officer of Government attends to his complaints and affords him redress, and without this he can have none. The additional sanction which he derives from a pottah, supposing it to be properly drawn out, is this, that it specifies, without reference to any other account, the terms upon which he holds the land, and the amount of abwab or cesses, which are not mentioned in the nirikbundi nor always in the jummabundi.—*Mr. Shore's Minute, June 1789.*

Such was the knowledge possessed by the framers of the Permanent Settlement when resolved to enter upon a course of legislation the sole purpose of which was to cultivate the waste lands, protect the ryots, and secure

It is immaterial to Government what individual possesses the land, provided he cultivates it, protects the ryots, and pays the public revenue.—*Minute of Lord Cornwallis, September 1789.*

the Government revenue. Beyond these three objects Government had no interest in legislating, and the settlement was only permanent in the sense that the Government demand was fixed; it did not otherwise injuriously affect the ryots, who, unlike the talookdars, were in no wise dependent on the zemindars, and Government expressly avoided the detail of a ryotwari settlement in order to pass such regulations as would be necessary for their protection. But though Government did not enter into the detail of a settlement, it declared its intention to adopt other means for limiting and simplifying the zemindar's demand.

> We have now the honour to submit the report required by Your Lordship in Council on the 12th March last. On the information received from the several Collectors in reply to our circular instructions of 10th August 1787, as far as respects the Bengal districts of Durrumpore and Ramghur.
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> The principal points to which these instructions related were the following :—
>
> *1st.*—The amount of the jumma.
>
> *2nd.*—The person with whom the settlement should be made.
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> *3rd.*—The rules for preventing oppressions on the ryots by the zemindars and farmers, as well as collections among the latter tending to defraud the zemindars and farmers of their just demands.—*Board's letter, 24th October 1788.*
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> I understand the word permanency to extend to the jummah only, and not to the details of the settlement, for many regulations will certainly be hereafter necessary for the further security of the ryots in particular, and even of those talukdars who, to my concern, *must still remain in some degree of dependence on the zemindars*, but these can only be made by Government occasionally as abuses occur; and I will venture to assert that either now, or ten years hence, or at any given period, it is impossible for human wisdom and foresight to form any plan that will not require such attention and regulation; and I must add that if such a thing was possible, I do not believe that it will be easy to find a man more capable of doing it than Mr. Shore.—*Minute of Lord Cornwallis, September 1789.*
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> The necessity of some interposition between the zemindars and their tenants is absolute, and Government interferes by establishing regulations for the conduct of the zemindars, which they are to execute, and by delegating authority to the Collectors to enforce their execution. If the assessment of the zemindaries were unalterably fixed, and the proprietors were left to make their own arrangements with the ryots without any restriction, injunctions, or limitations, which indeed is a result of the fundamental principle, the present confusion would never be adjusted.—*Mr. Shore's Minute, 8th December 1789.*
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> I agree with Mr. Shore that some interference on the part of Government is undoubtedly necessary for effecting an adjustment of the demands of the zemindars on the ryots. Nor do I conceive that the former will take offence at the reservation of their right of interference when convinced that the Government can have no interest in exercising it but for the purposes of public justice.—*Minute of Lord Cornwallis, February 1790.*
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> To the truth of this detail there will be no dissenting voice; and it follows from it that, until the variable rules adopted in adjusting the rent of the ryots are simplified and rendered more definite, no solid improvement can be expected from their labours upon which the prosperity of the country depends. The difficulties attending this task are allowed by all who have had experience of it; nor is much required to know that to make an adjustment between two parties, where no one fears and each suspects the other; in a country, too, where every innovation is received with disgust and apprehension, local information, assiduity and perseverance are indispensable requisites.—*Mr. Shore's Minute, December 1789.*

This done, the zemindar was to furnish the ryot with a simple lease containing the demand, and beyond this amount the ryot would not be bound to pay anything; indeed it would be the bounden duty of the Collectors to see that he was not compelled to pay anything beyond the established rate. So far in regard to the present; and in regard to the future, the ryots should not be "the absolute slaves of the zemindars," and subject to pay such enhanced rents as they might seem fit to demand; they, too, equally with the zemindars, should be protected in their property and no objection could be advanced to this, since the existence of a right to enhance the rates of cultivated land had never been recognized by the common law of the country, nor even claimed by the zemindars themselves. But though the zemindars should be prohibited from enhancing the rates of rent, they would not, as Lord Cornwallis pointed out—and he was careful to note the distinction—be precluded from raising the rents of their estates. They could induce ryots to cultivate the waste lands which covered nearly one-third of the country, and in places where the rates of rent varied with the nature of the cultivation, they could induce the ryots to cultivate the more valuable articles of produce. Lastly, where only the rates were fixed they could measure, and this was a fruitful, indeed the only, source of enhancement for long after the Permanent Settlement. All this was, as I have shown above, merely declaratory of the common law which recognized in the poorest ryot the right to a perpetual lease, and the only point in regard to which I can find any intention to make a change was in connection with the existing *khudkasht* ryots in whose favour an arbitrary rule, it was

> That the rents to be paid by the ryots by whatever rule or custom they may be demanded shall be specific as to their amount. If by a pottah containing the assul and abwab, the amount of both shall be inserted in it, and the ryot shall not be bound to pay anything beyond the amount specified on account of kircha, salamy, or any other articles.
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> If by a ticka pottah the whole amount payable by the ryot is to be inserted in it. If by any rule or custom, such as the payments of the last and preceding year, the rate of the village, pergunnah or any other place, an account is to be drawn out in the beginning of the year, showing what the ryots are to pay by such rule or rate, and a copy of it to be given to them; where the rents are adjusted upon a measurement of the lands after cultivation, the rates and terms of payment shall be expressed in the pottah.
>
> If by any established and recorded jummabundi that is to be rule for demanding the rents. If the rents are paid in kind the proportion which the ryot is to pay shall be specified either in account or written agreement.—*Mr. Shore's Minute, September 1789.*
>
> Mr. Shore's proposition that the rents of the ryots, by whatever rule or custom they may be demanded, shall be specific as to their amount; that the landholders shall be obliged within a certain time to grant pottahs or writings to their ryots in which this amount shall be inserted; and that no ryot shall be liable to pay more than the sum actually specified in this pottah, if duly enforced by the Collectors, will soon obviate the objection to a fixed assessment founded upon the undefined state of the demands of the landholders upon the ryots.—*Minute of Lord Cornwallis, February 1790.*
>
> If Mr. Shore means that, after having declared the zemindar proprietor of the soil, in order to be consistent, we have no right to prevent his imposing new taxes or abwabs on the lands in cultivation, I must differ with him in opinion unless we suppose the ryots to be the absolute slaves of the zemindars. Every beegah of land possessed by them must have been cultivated under an express or implied agreement, that a certain sum should be paid for each beegah of produce and no more. Every abwab or tax imposed by the zemindar over and above that sum is not only a breach of that agreement, but a direct violation of the laws of the country. The cultivator, therefore, has in such a case an undoubted right to apply to Government for the protection of his property, and Government is at all times bound to afford him redress. I do not hesitate, therefore, to give it as my opinion that the zemindars neither now nor ever could possess a right to impose taxes or abwabs on the ryot, and if from the confusion which prevailed towards the close of the Mogul Government, or neglect, or want of information, since we have had possession of the country, new abwabs have been imposed by the zemindars or farmers, that Government has an un-

doubted right to abolish such as are oppressive and have never been confirmed by competent authority, and to establish such regulations as may prevent the practice of like abuses in future.—*Minute of Lord Cornwallis, February 1790.*

Neither is the privilege which the ryots in many parts of Bengal enjoy of holding possession of the spots of land which they cultivate as long as they pay the revenue assessed upon them by any means incompatible with the proprietary right of the zemindars. Whoever cultivates the land, the zemindars can receive no more than the established rent, which in most places is fully equal to what the cultivator can afford to pay * * * *

The rents of an estate *can only be raised* by inducing the ryots to cultivate the more valuable articles of produce and to clear the extensive tracts of waste land which are to be found in almost every zemindari in Bengal.—*Minute of Lord Cornwallis, February 1790.*

The class of mere labourers who work for hire is not numerous; every ryot is a farmer who tills the land for which he pays rent. Talukdars hold in their own hands little or no part of their own estate to cultivate by means of servants. The poorest ryots are tenants, and, by the custom of the country, they are considered as a sort of proprietors, entitled to a perpetual lease. They are attached in the strongest manner to the soil; never migrate but from necessity; and I think they ought to be recognized as enjoying a right (they and their posterity) to their tenures.—*Report on Midnapore, 5th Rep., p. 529.*

See also Regulation XIV, 1793, section 6, 24; Regulation VII, 1799, section 23, clause 8; Regulation XXV, 1808, section 37; Regulation XXVI, 1808.

declared, should be laid down. Nor were these restrictions confined, as some persons would seem to think, to the zemindars then existing. No new proprietor, no matter how he obtained the property, whether by gift, private sale, or even public sale in liquidation of arrears, would be allowed to collect more than his predecessor was legally entitled to; for the act of transfer gave no sanction to illegal impositions. To set aside all doubts on this important point I give the opinion of Lord Cornwallis himself: "With regard to the *rates* at which landed property transferred by public sale in liquidation of arrears, and it may be added by private sale or gift, are to be assessed, I conceive that the new proprietor has a right to collect no more than his predecessor was legally entitled to, for the act of transfer certainly gives no sanction to illegal imposition. I trust, however, that the due enforcement of the Regulations for obliging the zemindars to grant pottahs to their ryots, as proposed by Mr. Shore, will soon remove his objection to a Permanent Settlement. *For whoever becomes a proprietor of the land after these pottahs have been issued will succeed to the tenure, under the condition and with the knowledge that their pottahs are to be the rates by which the rents are to be collected from the ryots."*

I will now sum up the result of all the authorities bearing on the relation of landlords and tenants at the time of the Permanent Settlement, and compare them with the legislation of 1793 and 1794. We shall then be in a position to see what changes were introduced, and how far the common law of the lands was modified.

Before the Permanent Settlement.

1. The relation was entirely governed by customary law.

2. The share or zemindary russoom of the proprietor by whatever name it was known, and whether it was paid in money or produce, was not determined by contract, but was fixed by the common law and known as the established rate. And this rule applied, and was intended to apply, to persons deriving their title by gift, private or public sale.

3. The landlord possessed no right to enhance this rate or customary demand as long as the State demand did not vary.

After the Permanent Settlement.

1. The relation was still governed by the customary law, except where new powers were given by express legislation modifying the common law.

2. The rule laid down for determining all disputes that might arise between landlords and ryots regarding the rates to be paid under the Permanent Settlement, was that the rates payable were the rates established in the pergunnah for lands of the same description and quality as those in dispute, and this whether the proprietor was auction-purchaser or not.—Regulation IV of 1794, preamble 16. Except in the case of farmers, neither competition nor freedom of contract was recognized, and even in their case Government did not, as a rule, allow the rents to be fixed by open competition, inasmuch as it was considered that such a system of farming tended to discourage agriculture—to encourage which was the chief object of the Permanent Settlement; Reg. II of 1795, sec. 10, papers, page 43; Reg. II of 1793, sec. I; Reg. VIII of 1793; Reg. XVIII of 1803, preamble. In no case could they contract any engagement contrary to the spirit of the Regulations,—Reg. VIII of 1793, sec. 65.

3. At the Permanent Settlement landlords were commanded to conduct themselves with good faith and moderation towards their ryots.—Reg. I of 1793, sec. VII; Act VI, sec. VIII, Art. VIII. They were directed to revise the cesses and consolidate them with the original rent.—Reg. VIII of 1793, sec. 52. They were bound to respect existing contracts, but if in the course of revision they found a *khudkasht* ryot holding below the pergunnah rate, they could, subject to certain restrictions, cancel his pottah and assess him at pergunnah rates.—Reg. VIII of 1793, sec. 60. And here I may point out the reason why nothing was laid down in connection with the rent of paikasht ryots, if indeed they existed in any number in Bengal, which I doubt. They were really privileged ryots. They always held at much lower rates than *khudkasht* ryots, and if any attempt were made to enhance rents to the established rates, the rates paid by resident ryots, they abandoned the land. Having settled the amount of rent, the zemindars were bound to deliver pottahs, evidencing the arrangement, to the ryots. These pottahs were not drawn up as the parties might determine, but in one general form approved of by the Collector of the district, and no other form was valid.—Reg. VIII of 1793, sec. 58, Reg. IV of 1794, secs. 4, 5. And these

were subject to perpetual renewal at the pergunnah rates whether the estate was sold for arrears of revenue or not.—Reg. IV of 1794, preamble, sec. 5.

4. All enhancement was prohibited and the ryot enhanced could demand the protection of Government.

4. The ryot remained, as he was before, a cultivator entitled to hold by perpetual renewals at the customary established rates.—5th Rep., page 529. And could protect himself against any attempt to enhance by a regular suit.—*ibid.*, page 525. His position was exactly the same as before the Permanent Settlement.

Reg. II of 1795, section 14.

In Regulation II of 1795 an exhaustive account is given of the circumstance under which the Permanent Settlement of Benares was undertaken and carried out, and from it we learn the conditions in the kabuliyats in force at that time. The renters were bound to collect from the ryots according to the *hookumnamas* of 1788. The Aumils were, however, authorized to lower those rates when their exaction might be found, under the actual circumstances of any part of the district, to operate to the oppression or distress of the ryot; but they were prohibited from enhancing the rates under any pretence whatever. This is wholly inconsistent with the idea that the zemindars could enhance the rate after a Permanent Settlement.

Reg. II of 1795, section 15.

There is nothing new in this plan, except the great advantages which are given to the zemindars, talookdars and ryots on the one side, and the additional security which the Company has against lessees by balances from the value of the land which is to be sold to make them good, being greatly increased on the other. By what probable, I may even say possible, means is such a plan to fail?—*Minute of Lord Cornwallis, September 1789.*

Now it ought to be remembered that the welfare and good of the whole was never intended to be sacrificed to the enriching of a few, perhaps worthless, individuals; who can show no pretence to these peculiar advantages, but a prostitution of their integrity to their avarice. Your aim must, therefore, be to remove all distinctions, to bring every man on a footing with his neighbour, to lighten the burthen on the whole by making it equal and impartial, and to enforce the surrender of lands unlawfully possessed.—*Rev. Reg. 1769.*

I think I have now sufficiently shown that under the Permanent Settlement and the Regulations zemindars got no new powers to enhance the legal dues of the ryot, or as Lord Cornwallis puts it, that there was nothing new in his plan except the great advantages given to the zemindars, talookdars, and ryots on the one side, and the additional security which the Company had for its revenue on the other. All classes benefited, and it never was contended then, as it is contended now, that the welfare and the good of the whole should be sacrificed to the enriching of a few. There are, however, several means of testing this conclusion, and if, as I trust, I have shown that this is the only theory consistent with the Regulations, we can determine the probability of its correctness by a comparison with the whole spirit of the legislation of that period. In the first place we know, as I have already pointed out, that the renters in 1786 were prohibited by the terms of their leases from enhancement. These conditions were renewed in the zemindars' kabuliyats at the time of the decennial settlement, and they were not touched by the Permanent Settlement. On the contrary, they were, to prevent any possible mistake, referred to by section 57 of the Regulation, which declares that "such of the restrictions on actual proprietors and farmers who hold their farms immediately from Government as are *set forth in their respective kabuliyats* and are not repealed by any Regulation printed and published in the manner directed in Regulation XLI, 1793, are to be considered in full force.

When the soil was declared to be vested in the zemindars, and it became capable of being transferred by private or public, voluntary or involuntary, sale or gift, there arose the necessity of providing for the cases in which the proprietary right in a portion of an estate was either transferred to strangers or partitioned among the proprietors. In the case of the transfer two dangers were to be guarded against. An honest purchaser might not know the value of the property, and, influenced by his ignorance, might not offer a fair price. Dishonest owners might transfer a portion of their estate, and so fraudulently saddle it with the Government revenue, so as practically to leave them in revenue free the enjoyment of the remainder. The latter danger might also arise in partition. The Legislature attempted to provide against both, and the manner in which this was done shows that Government had no intention that the rates of rent should ever be changed. Article 9, section 10 of Regulation I, 1793, ran as follows :—

"From the limitation of the public demand upon the lands, the net income, *and consequently the value* (independent of *increase* of rent obtainable by improvements) of any *landed property*, for the assessment on which a distinct engagement has been or may be entered into between the Government and the proprietor, or that may be separately assessed, although included in one engagement with other estates belonging to the same proprietor, and which may be offered for public or private entire, will be *ascertained by a comparison of the amount of the fixed jumma assessed upon it* (which, agreeable to the foregoing declarations, is to remain unalterable for ever to whomsoever the property may be transferred) *with the whole of its produce allowing for the charges of management.*" Putting for the moment out of consideration the expenses of management, the rule amounts to this, that in an estate under cultivation where there was no room for improvement, the net rental of a zemindar—his customary share—varied and varied only with the whole of the produce of the estate, or, in other words, the net rental was a fixed—a certain—and not an uncertain or variable—share of the produce. The law is unintelligible, if different zemindars holding estates of the same value originally could enhance the rates according to their will.

Let us now turn to the nature of the improvements by which the rents could be increased. At the time of the Permanent Settlement a large portion of the country was uninhabited and waste. In many parts the ancient irrigation works had been neglected. The ryots had deserted their holdings, and a practice had arisen of compelling those ryots who remained to pay the rents of the deserters, a practice set aside by the Government. It was expected that when the Government demand was fixed the zemindars would in their own interest employ capital in bringing these waste lands into cultivation, and would enjoy the customary rents free of any State demand. Further, in those places in which the rent varied with the nature of the produce, it was supposed that the zemindars would, by improving the capacity of the soil, enable the ryots to produce crops of greater value and in this way raise their rents. These are the improvements, and the only improvements specifically mentioned by Lord Cornwallis and described in the preamble to Regulation II of 1793. But in those cases in which the land was let for a lump sum at so much per beegah, the zemindar could gain no advantage in the manner above described. There the ryot was by the express words of the Regulation unfettered, and could, without dread of enhancement, cultivate whatever species of produce would yield the largest profit. But the zemindar gained in another way. By the custom of the country, revenue renters were bound to make *tuccavee* advances to the ryots at 24 per cent. per annum, and this custom was referred to in the preamble of Regulation II of 1793.

This restriction is not to prevent the farmer from affording the usual and necessary aids of tuccavee to the ryots, but that the premium of such advances be fixed at 2 per cent. per mensem, and payment received, not *in kind*, but *in money*.—Rev. Regulation, 1772.

The Permanent Settlement did not inaugurate, as Lord Cornwallis conceived, a period of rest and natural equality. The zemindars complained that the farmers refused to pay their rents; the Government, that the zemindars fraudulently suffered their estates to be sold for arrears and purchased them *benamee*. Urged by these considerations, Government was induced to pass Regulation VII of 1799. The preamble to this Regulation recites fully the reasons which compelled Government to resort to legislation. It states that "the frequent and successive sales of land within the current year having been found productive of material ill-consequences, as well towards the land proprietors and under-tenants as in their effect on the public interest in the fixed assessment of the land revenue," the Government was induced to afford an additional and an easier means of realizing rents. No injury to the ryots is expressed or implied, and this is explainable only on the supposition which I have already shown to be the fact, that auction purchasers could only demand the legal customary zemindary dues. This explanation of the omission in regard to the ryot becomes a positive certainty when we refer to the Regulation itself. Let us bear in mind that the law was intended to be a complete code for the realisation of rents from all the different classes of persons possessing an interest in or occupying the soil, whether farmers, under-farmers, or ryots, and, as might be expected, they are described in detail and as follows:—

Section 15, clause 7.

"If the defaulter be an under-farmer for the past year only, or whose lease may have expired with the past year, he can, of course, have no claim to any further lease; and although his lease may not have expired if he shall have neglected to fulfil the condition of it by the payment of his stipulated rent, it must be considered liable to be annulled, or otherwise at the option of the lessor. If the defaulter be a dependent talookdar or holder of any other tenure which, by the title deeds or established usage of the country, is transferable by sale or otherwise, it may be brought to sale by application to the Dewanny Adawlut, and in satisfaction of the arrear of rent, and the purchaser will become the tenant for the new year; or, if the defaulter be a lease-holder or *other tenant having a right of occupancy only so long as a certain rent, or a rent determinable on certain principles according to local rates and usages be paid, without any right of property or transferable possession, the proprietor from whom such tenure is held, or the farmer or other person to whom such proprietor may have leased or committed his rights* must be understood to have the right of ousting the defaulting tenant from the tenure he has forfeited by a breach of the conditions of it." The different kinds of under-tenants, so far as regards their rents, are in a few words—

(*a*) Dependent talookdars.
(*b*) Under-farmers.
(*c*) Tenants holding at a certain rent or at customary rates.

There is not a single word in the Regulation to justify the contention that there were any ryots liable to arbitrary enhancement, and as the list is complete no such class existed. Class (*c*) included ryots, and a comparison of it with section 56 of Regulation VIII of 1793 will show that the framers of this Regulation had that section before them. This by itself is positive and conclusive proof that not only were the ryots in Bengal not liable to be enhanced at the will of the zemindar, but that they also possessed a right of occupancy as long as they paid their certain or customary rent. And this was the interpretation which the courts put upon the Regulation, as I shall show when discussing the question of ejectment.

Regulation I, 1814.

Lastly, I would add that no trace of suits for enhancement of rates can be found in the description of suits subject to the jurisdiction of the civil courts, nor in the Stamp Acts of that period; and even in after years, when arrangements were made to facilitate the decision of suits under Regulation V, 1812, there is nothing said of suits for either enhancement or ejectment.

Regulation II, 1815; Regulation XIX, 1817, sections 5, 13.

This brings me down to 1812; and before entering on the legislation of that year, which may be properly dealt with as a new point of departure, I will sum up the results already obtained. The contention that zemindars could enhance the rates of rent—

- is inconsistent with the common law;
- is inconsistent with the public promises of the rulers of this country up to the Permanent Settlement, and was not granted by it;
- is inconsistent with the legislation which ensured at the Permanent Settlement in regard to the division of estates;
- is inconsistent with the legislation which followed the Permanent Settlement in regard to the realization of arrears.

Two theories have been advanced by members of the Committee. Mr. Field considers that "under the former Government of the country the amount of revenue to be collected was settled by a *periodical measurement and assessment*; that, inasmuch as the assessment was based on an average of prices for a period of years, it contained in itself an element of increase of rent as prices rose; that the early Regulations found this system in the country, did not interfere with it, and even referred to it and acknowledged its existence." In short, that the ryot's rents were to be enhanced by periodical assessments varying with the rise in prices; and in support of this opinion Mr. Field cites an impression of Sir George Campbell that such a procedure was probably contemplated. It is, I think, to be regretted that Mr. Field, when he stated such a theory had been recognized by the Regulations, did not give some further reference to the Regulations themselves to establish his position. I have carefully examined all the legislative enactments of those times and have not succeeded in finding any trace of such an idea. It is very probable that both Mr. Field and Sir George Campbell have been carried away by their not carefully distinguishing between the rights of Government and the rights of the zemindars, between settlements of revenue and settlements of rent. From the first the Government of this country declared its right to vary the revenue assessment, and when the Government did so, the zemindars' customary share suffered a corresponding charge; but this power, instead of being looked on favourably, was condemned by the founders of the Permanent Settlement. Lord Cornwallis said—"Although Government has an undoubted right to collect a portion of the produce of the lands to supply the public exigencies, it cannot, consistent with the principles of justice and policy, assume to itself a right of making annual or periodical valuations of the lands and taking the whole produce, except such portion as it may think proper to relinquish to the proprietors for their maintenance, and for defraying the charges of managing their estates.

"The supreme power in every State must possess the right of taxing the subject agreeably to certain general rules; but the practice which has prevailed in this country for some time past of making frequent valuations of the lands, and where one person's estate has improved and another's declined, of appropriating the increased produce of the former to supply the deficiencies in the latter, is not taxation, but, in fact, a declaration that the property of the landholder is at the absolute disposal of Government. Every man who is acquainted with the causes which operate to impoverish or enrich a country must be sensible that our Indian territories must continue to decline as long as the practice is adhered to."

The zemindars certainly did not possess this power. They were, as I have shown, prohibited from enhancing the rents of their ryots as long as the Government demand remained unchanged. Revenue settlements ceased in 1793, and with them the only recognized motive for enhancement of rates. If Mr. Field can show how his opinion can be reconciled with the great dislike which Lord Cornwallis expressed for periodical assessment of revenue, with his declaration that a zemindar could not raise the rents of his estate except by improvements or by cultivation of more valuable species of produce, with the common law of the land, with the rules laid down for determining the value of partitioned estates, with the fact that no person could get more than was paid to his predecessor, with the right of the ryots to obtain perpetual leases at the rates then fixed, and with the procedure for realizing the rents of ryots in 1799; or if he can show a single section of any Regulation or even any authority of the time in support of such a contention, he will certainly have succeeded in bringing to light an important factor in the legislation of the period which, as far as I know, has not before been discovered by any one. This theory, which, as I have already pointed out, rests mainly on a printer's error, appears to Mr. Field to derive support from section IX, clause 2, Regulation VIII of 1793, but this impression has, as Mr. Mackenzie points out, clearly arisen from a misapprehension of the meaning of the word "assessment." Whoever wishes to understand that section has only to read sections 41-46 of the Regulations laid down for the decennial settlement from which it is taken, and section 27 of Regulation VII, 1799.

See also Regulation VIII, 1800; Regulation I, section 5.

Again, in connection with this question, Mr. Harrison, who, I understand, is not in favour of rack-renting, has put forward arguments which he conceives might be used in support of the proposition that the ryots as a body cannot complain of rack-renting because the cultivators of the present day cannot contend that they are the true descendants of the ryots of 1793; and he urges that, even if they could, the rates at the Permanent Settlement were rack-rents. He says—

Mr. Harrison informs me this extract did not refer to rack-renting, but was written to show that the rights of the cultivators were not in strict conformity with those of khudkashts under the old Regulation.

"Some of the notes that have been laid before us virtually proceed on the assumption *public revenue shall bind themselves to grant pottahs to their under-renters and ryots*, in which all authorised abwabs shall be consolidated with the land rent or assal jumma, and expressed in a gross sum: that counter-engagements shall be executed by the ryots and under-renters of a similar tenure; and that nothing but what is therein expressed shall be collected from the ryots or under-renters of whatever description. And whereas it is essential to the mutual rights and interest of zemindars and other landholders and farmers of land, and of their under-renters, tenants, and ryots, that the terms and conditions of all engagements entered into between them for the payment of rents should be clearly and specifically defined, whereby the courts of justice in all cases of exaction, evasion, or litigation may be enabled to ascertain and determine the exact amount demandable."

When Government created Courts of Dewanny Adaulut and declared its intention not to arbitrarily interfere in matters affecting the assessment of rents, it became necessary to leave that portion of the lease which declared the rates of rent subject to the decision of the civil courts. Hence, in Regulation IV of 1794, the consent of the Collector was limited to the form only, and the rates were subject to the ordinary tribunals, which were just as much bound by the Regulation as the revenue authorities had been before them. This was, in practice, I think, a grievance, because a zemindar often issued a pottah with the approval of the Collector which was subsequently set aside by the civil courts. Be that as it may, what I wish to impress on the Committee is that a pottah after the Permanent Settlement was in no wise founded on a contract with the ryot; it was nothing more nor less than written evidence of a common law obligation to pay a certain rent, put in a prescribed form in regard to amount of land, rates if variable, and sometimes it contained a term. There were no such things as provisoes for re-entry, or forfeiture on breach of covenant, or any other stipulation depending on contract. These would hardly fit in with a mere customary proprietory right in the soil, with the declaration that landholders were prohibited from asking "higher rates than the established rates of the pergunnah," that contracts opposed to the spirit of the Regulations were void, and that ryots were entitled to a perpetual renewal of their leases at the same rates.

This was the exact position of matters at the passing of Regulation V of 1812, which repealed the previous regulations so far as regards the "form" and no further. It left it in the power of the zemindar to grant for a longer term than they could before, and no more; it did not interfere with the matter—the rates, the protection held out by Regulation VIII of 1793, sections 54, 59, and the preamble, sections 6 and 7 of Regulation IV of 1793. Nothing but the complete repeal of these Acts, accompanied by a clear and positive enactment repealing the common law, could relieve the zemindar of the duty imposed upon him by law and his engagement with the State, of granting and renewing leases at the established rates without restrictive covenants based on contract. So far from striving to do away with any of these safeguards the law added another. Before Regulation VIII of 1812 a ryot could, as I have shown, be called on to pay the established rates by a mere notification, but afterwards a special notice brought home to the ryot was a condition precedent to enhancement. I regret that Mr. Field takes a different view of the contents and scope of the Regulation. He says—

Doubts having arisen on the construction of section 2, Regulation V, 1812, it is hereby explained that the true extent of the said section was to declare proprietors competent to grant leases for any period, even to perpetuity, at any rent which they might deem conducive to their own interest. Regulation XVIII of 1812, section 2.

"It may be observed that the provisions of Regulation V of 1812 apply only to cases of contract which the Legislature was apparently still sanguine would come to regulate matters between zemindars and ryots; that no provision was made as to the term for which a ryot was entitled to demand a pottah, and that the provisions of section 7 of Regulation IV of 1794 as to the renewal of pottahs were not applicable to pottahs granted under Regulation V of 1812." Mr. Field does not, as I have had to remark on another occasion, give us the authorities which induced him to put forth, as self-evident, an opinion which, if true, would, as I remarked on his interpretation of the Permanent Settlement, brand the Government of the day with the grossest breach of faith, with the offence of deceiving the ryots and destroying their rights while all the while they were putting forth their grievances as one of the motives which induced them to legislate. But happily the interpretation of that Act is beyond all doubt, and I fear that Mr. Field's opinion on this point must be considered as irreconcileable with the whole course of judicial decisions.

In 1816 the Judge of Rungpore addressed the Sudder Dewanny as follows:—

"4. The number of summary suits instituted annually since the year 1810 is exhibited in the margin. The increase is to be attributed to the operation of Regulation V of 1812, which seems to have been understood by the farmers and zemindars as authorizing them to consider the ryots, on the expiration of their leases, as tenants-at-will, and has consequently led them to demand enhanced rents in most parts of the district. The provisions of secton 15 have also induced many, who had demands against their tenants on old engagements, to substitute summary prosecutions for the former mode of distraint.

Cons, p. 76.

"5. By far the greater number of summary suits preferred last year were for arrears of rent due on kabuliyuts; but many of those that have lately been instituted are consequent on the more general operation of section 10, Regulation V of 1812, and are preferred either by the ryots after releasing their property from distraint, or by the farmers or zemindars to recover increased rents on the grounds of having served their tenants with the notice described in the above section and regulation, the general principles of which, although it is professedly enacted for the guidance of persons purchasing lands sold for arrears of revenue, appear to be applicable to all cases where no written engagements exist, as the respective rights of the proprietors and ryots, considered independently of their mutual agreements, cannot be considered to be altered by the mere circumstance of the sale of the estate.

"6. On first view of section 10, Regulation V of 1812, it might be inferred that the zemindars or their representatives possess the power of exacting, in the first instance, by distraint or by a summary process, whatever amount they may have thought proper to insert in the notification required to be conveyed to the tenant; the latter having only the option of resigning his land or continuing to hold it subject to pay the enhanced rent until he can prove the injustice of the demand by a regular suit. Such an interpretation, however, does not seem to be easily reconcilable with that part of section 7, Regulation IV of 1794, which being declaratory of the rates at which the ryots were entitled to demand pottahs, and, of course, to continue in possession of their lands, cannot be considered as abrogated by section 3, Regulation V of 1812; and I have hitherto deemed it necessary to require zemindars and farmers prosecuting summarily for enhanced rent, or defending suits instituted against them under section 15, Regulation V of 1812, *to show that the amount demanded in the notification served on their tenants was conformable to the pergunnah rates and the actual extent of land.*

"7. Should this construction of the Regulation be correct (and I beg the favour of your informing me should the court consider it otherwise), it is evident that in the generality of suits denominated summary it *will now be necessary to adduce evidence to prove the pergunnah rates*, the quality of the cultivator's land, and frequently the quantity thereof, all of those points being usually disputed; and even the last remaining doubtful until actually measured in consequence of the fraudulent reduction made by the zemindars before the decennial settlement in the nominal extent of every farm or jote on their estates, for the purpose of imposing on Government and obtaining their lands in perpetuity on favourable terms."

The Court of Sudder Dewany Adawlut concurred in this view of the law, a view which by itself gets rid at one sweep of the idea that there existed a distinction between *khudkasht* and *paikasht* in regard to rates, and of all ideas of progressive rates varying with prices. The Judges said—

"The Court entirely concur in the construction of section 10, Regulation V, 1812, stated in the sixth paragraph of Mr. Scott's letter, dated the 28th July 1815, and resolve that he be informed accordingly. The Court observe that the written notice required by section 9 of that Regulation when no written engagement may have been entered into, expressly refers to tenant subject to an enhancement of rent 'under subsisting regulations' *including, of course, the unrepealed provisions in section 7, Regulation IV*, 1794, relative to the renewal of pottahs at the established rates of the pergunnah."

I trust I have now shown that Regulation V of 1812 did what its framers intended it should do—benefit the ryot—and did not make him the dependent of the zemindar. His rights under all "the subsisting Regulations," not merely Regulation IV of 1794, were upheld except as regards the mere *term* of the lease, and this, in the face of the strong restrictions on the zemindar, could give little ground for objection in theory, though, as a fact, I believe it has caused great evil to the ryots. The ryots' position was as follows:—

Before Regulation V of 1812.	*After Regulation V of 1812.*
1. The form as well as the rates were subject to revision by Government officers.	1. The form (*i.e.*, the term) was not subject to the Collector's revision.
2. The zemindar was bound to grant leases at the pergunnah rates, and any ryot could, in a regular suit against the zemindars or farmers who refused pottahs or receipts, get them and damages from the party refusing under the provisions of sections 59-63, Regulation VIII of 1793, Const. 67.	2. The zemindar was bound as before to grant leases at the pergunnah rates and to renew them; but he could also take salamee and give a perpetual lease at low rate.
3. The zemindar could claim rent at the pergunnah rate by a general notification under section 5, Regulation IV of 1794.	3. The zemindar could proceed as before, except where the pergunnah rate would be an enhanced rate, when he must follow the procedure laid down in not only section 5, Regulation IV of 1794, but also sections 9 and 10 of Regulation V of 1812; Const. 257, S. D. Dec. 1850, page 8; Select Rep., VII, page 182.
4. If the zemindar instead of suing for rents elected to distrain, the ryot could contest the proceeding by a regular suit.—Const. 327.	4. The ryot could bring a summary suit (Const. 113), and the zemindar would be compelled to prove that the amount demanded was conformable to the existing pergunnah rates and the actual extent of land; Const. 234; Const. 714; S. D. Decision, 1852, page 120; S. D. Decisions 1851, page 620; Select Rep., II, 174.

Before Regulation V of 1812.	*After Regulation V of 1812.*
A zemindar could not cancel a lease until proof of the existence of an arrear of rent by regular or summary suit.	Even after such proof a *khudkasht* ryot could avoid ejectment by paying the arrear.—Const. 1205; S. D. Decisions, 1850, page 8.

So far as the law went, the ryot was, if anything, better off after Regulation V of 1812 than before; but as the Permanent Settlement receded, the papers connected with it became less known; the Acts which remained began, as Act X has since 1859, to be looked on by some as the only law, instead of being merely declaratory or supplementary of the common law, an idea which, however, was completely set aside by Regulation VII of 1822, a Regulation which was subsequently extended to all those parts of Bengal not permanently settled. The preamble of this Regulation is very instructive; it shows the principles which should guide even Government officers, the paramount power—not zemindars—in enhancing its demand. They should not aim at any general and extensive enhancement of the jumma, but should rather direct their efforts to equalizing the public burthens, ascertaining, settling, and recording the rights and interests of all parties connected with the soil, in order that the proceedings held, and the records formed by the settlement officer, "should be such as that all demands, claims and suits may be adjudged and determined according to the facts therein stated until the same shall have been formally altered or amended by a regular suit." The great duty then was to supplement what was left unfinished at the Permanent Settlement. They were to determine and record the rates per bigha, and it was declared that all decisions on the demands of the zemindars would in future be regulated by the rates of rent and the modes of payment recorded in the Collector's proceedings, *until* distinctly altered by mutual agreement, or after full investigation in a regular suit. In this law, as in the rules of the Permanent Settlement, the fundamental idea is the same. The zemindar was entitled to get the customary rate—a fair rate—of rent, and on this rent the Government demand was fixed; but the common law prohibiting all enhancement was not repealed, and the tenant was protected for the period of the settlement.

This I believe not only to have been the law, but the practice, up to the passing of Act X of 1859. At the passing of that Act the ordinary rights of a ryot were as follows:—He was entitled to receive pottahs according to the pergunnah rates; he was equally entitled to their renewal; and the result of this was that the rates of rent but very slowly increased, and increased up to 1822 only by the sheer force of the power which the zemindar obtained from being looked on as an English proprietor. It is said that Act X of 1859 changed all this, although no such alteration was, we know, intended by its framers. It created two different rates—those paid by ryots having a right of occupancy, and those paid by the other ryots. Both rates were to be fair and equitable rates, but the occupancy rates were more favourable to the ryots. A zemindar could not, and cannot now, enhance at will, though no doubt he can enhance more easily than he could under the old regulations. The law has been an evil both to landlords and ryots. It raised the hopes of the former, and gave them the idea that they could enhance much more than they have been able to do. It leads them on now to demand new facilities for enhancement—a further encroachment on the promises held out to the ryots by Government from 1793 up to 1859; and before this demand is granted, the State should jealously examine the grounds on which it is based. Clearly under the terms of the Permanent Settlement, the zemindars have no right to any laws that would deprive the ryot of his rights—rights often acknowledged, but seldom protected—and yet they now request that not only should the settlement be preserved for them, but that it should be violated in their favour to the injury of the ryots, and that they should not only be allowed the right to eject at will but to rack-rent, and even to re-settle the lands every ten years or less—a proceeding that the Government of the country has never attempted. In short, they wish to be placed in a higher position than even that claimed by Government.

Perry O. Cas. 495.

2 Har. 189.

I will now turn to the powers possessed by an ordinary landlord to eject a ryot. Before the accession of the British Government a division of lands had arisen—a division which exists even to the present day. I mean *ryoti* and *khamar*. Zemindars were prohibited by the common law of the land from turning out their ryots, and turning *ryoti* land into *khamar*; nor had they any authority to determine, as it is called in English law, the tenancy of the persons holding *ryoti* land. No trace of any such authority can be found in the history of the country. The common law declared that the immediate cultivator of the soil, duly paying his rent, could not be dispossessed of the land he occupied, and this rule was not confined to Bengal, since usually throughout India permission to cultivate land by Government was considered to carry with it a right of possession, subject only to such payment of revenue as the Government might choose to exact. Such was the relative positions of landlords and tenants when we took possession of the country, and, as I have shown in another portion of this note, instead of changing this relation to the disadvantage of the ryot, we, for twenty years before the Permanent Settlement, put forth from time to time public proclamations declaring our intention to retain the ryot in the perpetual and undisturbed possession of his holding; and, finally, in 1793

Col. 207.
Note, p. 8 ante.
Reg. I, 1793, s. 8, art. 7.
W. R., F. B., p. 166.

I cannot conclude this subject without humbly soliciting the Superior Court to take into their consideration the expediency of modifying the rule of the seventh clause of section 15, Regulation VII, 1799, which particularly relates to proprietors being allowed to oust their defaulting tenants (farmers) without any previous application to the court of justice. The right was never known or acknowledged in this district till within these few months, and it appears never without abuse. Instead of the powers given to proprietors of land to oust their farmers without any previous application to the courts of justice, it would be sufficient that it should be necessary for them to proceed against the defaulter under the first six clauses of section 15, Regulation VII of 1799, when, if the defaulter be taken into custody and the arrear demanded be proved against him, the proprietor must be allowed to resume the farm; and should he not be taken into custody or attend after an istahar similar to that directed in section 2, Regulation IV, 1793, the proprietor might be called on to show cause for ousting the farmer, and, after an enquiry *ex parte*, if proving the farmer to be in balance, might be empowered to resume the farm and left to recover the amount of the arrear by a regular suit. The immediate enquiry which is made into suits under Regulation VII of 1799 would prevent the proprietor from being a sufferer by this mode of proceeding, which would, at the same time, form a protection to the farmer against the present undefined power of the proprietor, and would be the means of preventing many serious affrays and breaches of the peace.

The Court remark that the order of the late Judge Mr. Cornish on the case appears to have proceeded upon a construction of the seventh clause of section 15, Regulation VII, 1799, according to which if a landholder, alleging his tenant to be in arrear, think fit to take upon himself to attach his tenure, the tenant is bound to give up his possession; and should the tenant deny that he is in arrear and refuse to quit, the courts of justice are obliged, upon application from the landholder, to cause the tenant to be removed, and the tenure given up to the landholder, without any previous investigation into the justice of the landholder's claim. The Court cannot acquiesce in this construction of the clause in question.

* * * * * *

The Court are accordingly pleased to authorize your proposed review of the late Judge's order in the case.—*Const. 113*.

Reg. XXXIII, 1793, s. 8.
„ II, 1793.
„ XXXVIII, 1793, ss. 4, 2.
„ XIX, 1803, s. 4.
„ XXVIII, 1803, s. 17.
„ XXXIII, 1795, s. 9, cl. 1.
„ I, 1824, s. 6.
„ VII, 1793.

With reference to your remark that if, without distraint of property, an ejectment has actually taken place in consequence of the ryot being compelled to quit by force or intimidation, and his former possession shall be disputed and denied by the zemindar, you cannot discern to whom the investigation of such a case would belong, I am desired to communicate to you the opinion of the Court that either the rules of Regulation XLIX of 1793, or those of Regulation VIII of 1819, would be applicable: the former where the dispossession may have been effected by force, and the latter where these means may not have been resorted to.

The declaration contained in the fifth clause of section 18, Regulation VIII, 1819, that it is illegal to oust or disturb resident cultivators unless under certain stated circumstances, necessarily implies a remedy in case of the contravention of such rule, and the Court are of opinion that, in the spirit of the enactment cited, such remedy should be afforded by the Judge on the summary application of the ejected ryot, by an order for his being restored to possession, and his retaining it until the process prescribed by the Regulation shall have been observed.—*Const. 475.*

I am directed to transmit to you, for the purpose of being laid before the Calcutta Court, the accompanying copy of a letter No. 68, under date the 7th instant, from the Officiating Judge of Ghazipore, requesting the opinion of the Court whether in cases in which a landholder may institute a suit for arrears of rent, and at the same time for the ejectment of the tenant from the land in consequence of the arrear sued for being due, the amount of stamp should be computed according to the value of the land together with the amount of arrear, or merely with reference to the latter?

The Court propose, with the concurrence of the Calcutta Court, to inform Mr. Heyland that they do not very clearly understand how the question submitted by him, as above stated, can arise. They remark that under the provisions of clauses 4 and 5, section 18, Regulation VIII of 1819, the landholder must first establish by a suit, either summary or regular, the existence of an arrear before he is at liberty to cancel the lease of an under-tenant, while, as regards khudkhast ryots, they have also the power of immediately paying into Court any sum adjudged to be due from them before they can be ejected.

With regard to a suit brought by a resident cultivator against his landholder to obtain a reversal of a summary decision passed by a Collector, adjudging a balance to be

gave notice to the zemindars that we reserved to ourselves the power to enact such regulations as we might think necessary to prevent arbitrary dispossession, or, as it was called, wanton aggression, and to protect the cultivators of the soil. If the members of the committee will turn to the Regulations passed in July 1792 for empowering the landholders and farmers to realize rent in a summary manner by distraint, they will see the high position given to ryots, tenures, and the determination to protect them—a determination admitted even in 1862 by one of the greatest men who ever took the extreme common law view—Sir Barnes Peacock,—who said "I admit the intention of the Legislature (to use the words of Lord Cornwallis) was to prevent the zemindar from dispossessing one cultivator for the sole purpose of giving the land to another, and thereby committing a wanton act of oppression from which he could derive no benefit. It is not for me in this place to speak of the policy of an act even to that extent." By that Regulation the landlords were empowered to distrain and sell the movables of persons in arrear, but they were prohibited from selling the lands, houses, or other real property of the cultivators—a provision difficult to understand, if the ryots could be turned out after reasonable notice. They will also find similar indications in many other Regulations, all inconsistent with the idea of tenancy-at-will. The ryots expended money in permanent improvements, in digging tanks and raising embankments; they could mortgage their land and crops, and could sub-let, and were acknowledged to possess a valuable interest in the soil—an interest which used to be attached and managed by the zemindars when they fell into arrears; and not until the year 1799 could they be dispossessed for even non-payment of rent; and the Act which conferred this admittedly new power on the landlord acknowledges, as I have already stated, and in a most distinct manner, a right of occupancy in every ryot as long as he paid his rent—a right which apparently did not extend to *paikhust* ryots in Benares. Regulation VIII of 1819 gave still further protection, and after that year not only must a landlord, before he could have cancelled any ryot's lease, have established by *a suit* the existence of an arrear, but *khudkasht* ryots had also the right of paying into court any sum decreed before they could be ejected. It is not necessary for me to set out the numerous decisions supporting this conclusion, and I will restrict myself to the opinion of the highest revenue authorities and the leading cases in the Sudder Dewany Adawlut and Supreme Court bearing on the question.

The Board of Revenue in 1854 was of opinion that no ryot could be ejected, even by an auction purchaser, before Regulation XI of 1822. Again, in 1843 the nature of a ryot's tenure was argued before Justices Grant, Seton and Peel, Judges whose opinions will no doubt command the respect of the Committee, and they held that a ryot had a better tenure than a lessee in England, and one not nearly so precarious as that of a tenant-at-will. In 1855 the very same question arose in the Sudder Dewanny Adawlut. A ryot sold his holding, and the purchaser sued the person in possession, and it was held that he could not succeed on the ground that by the custom of Bengal—a custom whose existence throughout the whole province was clearly recognised in Regulation VII of 1799—an ordinary ryot had only a right of occupancy so long as he paid his rent, and not a transferable interest. I mention this case because it is the leading case in Bengal, and has been referred to, and not with disapproval, by the Privy Council.

due from him, and to regain possession of his jote from which he may have been ejected consequent on such decision, the Court propose to refer Mr. Heyland to the letter addressed by them under date the 7th February 1834, to the Judge of zillah Mynpooree (No. 862 of the construction book) as explaining the manner in which such suits should be estimated.—*Const. 1205.*

"LEITH and MORTON *contra.*—The talookdar is the party in possession. He has no reversionary interest as the landlord in England. The ryot's tenure is peculiar to this country; he has an hereditary interest, independent of both talookdar and Government, neither of whom can displace him so long as he pays his rent. The talookdar not being the reversioner, he cannot bring case as such. [PEEL, *C.J.*—Case will lie for a injury of this nature.] There is no injury done for which case will lie. [PEEL, *C.J.*—If it is a mere trespass without injury the plaintiff is not damnified.] The talookdar is the party in immediate possession of the land; the ryot has no interest therein, but is a mere cultivator of the soil.

"PEEL, *C.J.*—On the first ground the plaintiff must be nonsuited. The ryot here has a better tenure than a lessee in England, and one not nearly so precarious as that of the tenant-at-will. Case was the proper remedy in this instance, for though the zemindar has no reversionary interest he has an interest which has been injured by the tortutous act of the defendant. This objection puts the plaintiff out of court on all the trespasses, excepting the one on one of the houses mentioned in the plaint. In that instance the objection that the abuttals have not been proved will be valid. The doctrine of amendment will not hold, so as to enable us to amend the record, and the plaintiff must be called.

"GRANT and SETON, *Js.*, concurred. Nonsuit."

This case was admitted to special appeal on the 11th January 1854 under the following certificate recorded by Sir R. Barlow and Mr. H. T. Raikes:—

"The ryot sued defendant for possession of a jote which he had bought from the former holder.

"Both the courts have held that a ryot can sell his holding to a third party; this right is denied by the defendant, who argues that such sale, without his permission, is not good.

"The terms of the Principal Sudder Ameen's confirmation of the Munsiff's decision are not quite so clear and specific on the point at issue as they might be, but his order involves the adjudication of the principle contended for by the special appellant.

"The question is one of general interest on which an authoritative judgment is required. We admit the special appeal accordingly."

BABOO RAMAPERSAUD ROY pleads that the lower courts are wrong under clause 7, section XV, Regulation VII of 1799. A case of sale of a transferable right and one where no such right exists are different. The first can be sold with zemindar's sanction, not so the latter. The case at page 536, Sudder Dewanny Adawlut Reports, 15th June 1853, is not so strong a case as this, though the Court ruled that there was a transferable tenure concerned in it. In this case the ryot has only a temporary right of occupancy so long as he pays his rent. A farming tenure cannot be sold in execution of decree, or by private sale, without the zemindar's sanction; this has been ruled. The meaning and spirit of the law quoted upholds the principle, and the lower court's judgment must be reversed.

BABOO KISHENKISHORE GHOSE *in support.*—The admission is with reference to the state of the case and the facts recorded, not on the general point.

The Court having appointed Moonshee Ameer Alee and Baboo Bungseebuddun Mittra to argue for the opposite party, Moonshee Ameer Alee states that the defendant pleaded plaintiff. Ramdhun was a chookanee ryot, who cannot sell his jote. The principal Sudder Ameen found otherwise, and as the petitioner has failed in proving his plea, and a fact has been established by the courts below, no special appeal can stand upon a general question.

RAMAPERSAUD *in reply.*—Relies on clause 7, section XV, Regulation VII of 1799. He admits that certain classes of ryots have alienable rights, but plaintiff has not produced any proof of the nature of his right. He is called a ryot merely by the courts, as he calls himself in his plaint. Refers to Volume III, pages 434 and 460, Harington's Analysis.

Judgment.

It has been argued for the respondent that this application cannot be admitted, because the lower courts have decided a fact, namely, that the plaintiff is not, as alleged by the defendant, a chookanee ryot, and that therefore the general question as raised by the certificate cannot be heard. We find that on perusal of the pleadings below, the courts ruled that a ryot (without defining the nature of his holding) could sell his jote to a third party without permission of the zemindar, hence the general question does arise.

In the course of the argument reference has been made to the court's construction No. 890, but it will be observed that it provides that the permission of the zemindar to the sale of the jote in execution of decree must be obtained.

The construction does not apply to this case, in which the plaintiff, ryot, is a private purchaser from another ryot.

The plaintiff has not shown that his vendor, whose rights only he bought, was a holder of one of the tenures excepted in the five clauses of section XXVI, Act I of 1845; nor does he prove in what particular class of ryots he is included. We therefore consider the plaintiff's claim to possession, without permission of the zemindar, invalid. He bought, as he thought, something. The principle *caveat emptor* strictly applies, and it was for him to look to the certainty of getting a consideration for his purchase-money. The party whom he succeeded had no equivalent to offer, he had merely right of occupancy so long as he paid his rents; failing to do so, either from inability or from unwillingness, the possession returned to the proprietor, the contract between him and his ryot being no longer in force.

Such is the custom of the country, and none but the tenures referred to in Act I of 1845, or in cases where a bonus has been given, thereby creating in the ryot a right in the property to that extent, are considered tenures transferable by the ryot.

In support of his opinion reference may be had to that of Harrington. See pages 434 and 450 of this Analysis, Volume III.

For the above reasons we would reverse the judgment of the lower courts in favour of the appellant with costs.

12 Moore, p. 274.

The ryot has an indefeasible right of occupation so long as he pays the Government assessment.

1 Mad. Rep., p. 407.

I trust that I have proved beyond all doubt that up to 1859 if not to 1862 the ryots of Bengal, like the ryots in Madras and Bombay, by the custom of this country had admittedly an indefeasible right to possession as long as they paid their rent, that there is nothing in Act X, 1859, destroying any custom—much more a universal custom—and that the only conclusion which can be accepted is that a ryot cannot be dispossessed after notice. Indeed, neither the language of the Regulation nor that of the people furnishes the equivalent of such a tenure as that of a tenancy-at-will. It has been said—Then what is the use of the statutory occupancy right? The answer is that it goes further; it protects against an auction purchaser at a revenue sale.

In conclusion, I would point out that twice in the course of the last 70 years have great attempts been made to treat the ryots as holding-at-will, and to place them in the position of the *paikasht* ryots of the North-West. The first was after 1812, when the zemindars, admitting they could not eject, attempted to reach the same end by claiming a right to enhance at discretion; a right to demand whatever they thought fit, leaving the tenant only the option of resigning his land; but this attempt, as I have already pointed out, failed; no such right was acknowledged or admitted. The other attempt, the converse of the former, is now passing under discussion. The zemindars say that though they cannot enhance at discretion, they can arrive at the same end by dispossession after notice; but the Committee should bear in mind the uniform current of decisions against any such right, and above all the words of the Privy Council that "A suit to enhance rent proceeds on the presumption that a *zemindar* holding under the perpetual settlement has the right from time to time to raise the rents of all the rent-paying lands within the *zamindary* according to the pergunnah or current rates, unless he is precluded from the exercise of that right by a contract binding on him, or the lands in question can be brought within one of the exemptions recognised by Bengal Regulation VIII of 1793; *and it also assumes that the defendant had some valid tenure or right of occupancy in the lands which are the subject of the suit.*"

Then did Act X give any such power to eject after notice? In the preamble of the Bill it was declared that the law was required to modify "the existing law relative to the rights of ryots with respect to the delivery of pottahs and the occupancy of the land, to the prevention of illegal exaction and extortion in connection with demands of rent."

The Statement of Objects and Reasons is no less explicit. It runs as follows:—"The Regulations declare that ryots are entitled to receive pottahs for the lands cultivated by them, and to have their rates of rent adjusted on certain defined principles. They also prescribe penalties for the exaction of any excess above the legal rate of rent or of any unathorized cess. Further, they recognise the right of all resident ryots to the occupancy of the lands cultivated by them so long as they pay the established rent. But the remedy in all cases is by regular suit in the civil court; and to refer a poor cultivator to a regular suit under the practice of the courts is almost tantamount to refusing him any remedy at all." This may be taken as an accurate exposition of the law *common* to Bengal and the North-West; in portions at least of the latter province *paikhast* had, from the earliest Regulations, admittedly no right of occupancy. Lastly, Lord Canning in giving his assent declared that the great inducement which moved him to do so was that he believed it would confer a great practical benefit upon the agricultural people of Bengal. It seems difficult to conceive that either Lord Canning or the members of his Government would destroy the common law right of occupancy of the ryots, which, as the Statement of Objects and Reasons declares, was recognised by the Regulations. In this case, as in the Regulations of 1793 and 1812, the Legislature made no such mistake, committed no such wrong, and Act X may be searched in vain for any statutory power of ejectment beyond those in existence before it. By section XXI a ryot was liable to ejectment for arrears of rent. This was the old law. By section 78, if the arrear decreed was paid within 15 days, *ejectment was refused*. This, too, was the old law. Beyond these there is not a single section in Act X giving any power to eject after notice; indeed the words "notice to quit" are not to be found in the whole Act. It is true that section 25 acknowledged the existence of separate suits before the Collector to eject tenants not having a right of occupancy; but I think no lawyer will say that this procedure section clothed zemindars with a right to eject after notice.

But, to put an end to any doubt on the matter, I will give what I think is a satisfactory explanation of this section. From the earliest times no landholder could eject without the assistance of the revenue or judicial authorities. If he did so, the tenant had his possessory action, and has to this very day. Section 25 merely declared that the proper authority to apply to, whenever the right to eject accrued, was the Collector. Again, the Act was a Procedure Act. Its framers aimed at collecting together all the previous laws, and they did this in the matter of ejectment as in other cases.

Reg. XLIX of 1793; Act IV of 1840; Act XIV of 1859; Specific Relief Act, I of 1877.

Act. X, s. 1.

Before that Act auction purchasers at revenue and putni sales could eject, but only by a regular suit. Act X repealed the auction-purchase law, and from its coming into force all applications to eject were transferred to the revenue authorities. This, then, is the meaning of section 25. It recognised the new and extended jurisdiction of the revenue courts, partly given by the preceding sections of the Act, and it would have been imperfect if it had not; but it gave no new power to eject of any kind. It is a mere procedure section, the substantive law previously contained in Act I of 1845 having been re-enacted in Act XI of 1859. Whoever enquires into this last attempt of the zemindars to extend their powers of ejectment will be astonished to find how modern it is. The

11 W. R. 509; 6 W. R. Act. X 102; 11 W. R. 161.

The declaration contained in the fifth clause of section 18, Regulation VIII, 1819 (that it is illegal to oust or disturb resident cultivators unless under certain stated circumstances) necessarily implies a remedy in case of a contravention of this rule, and in the spirit of the enactment cited such remedy should be afforded by the Judge on the summary application of the ejected ryot by an order for his being restored to possession, and his retaining it until the process prescribed by the Regulation shall have been observed. The
aisdiction formerly exercised by the Judge with regard to
of ars in question having by Regulation VIII, 1831, been
The Coto the Collector, the Court are of opinion that
Court, to into redress complaints of illegal ejectment
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landholder must first the case within the cognizance of the
regular, the existen *order No. 100, November 1833.*
to cancel the lease c
khudkhast ryots, the t I can find is that given at page 548, W. R., Vol. XXII, in a case in which
paying into Court any delivered in September 1874 by Justices Phear and Morris; and this deci-
before they can be ejecte the test of a Full Bench and the Privy Council, and probably under
With regard to a suit
against his landholder to vourable to a correct conclusion, since the report of the case leads to the
decision passed by a Collec tlemen who argued it were only imperfectly acquainted with the rights
of his holding.

I will now consider the position of auction purchasers. Before doing so I would point out that it seems to me undue prominence has been given to the enactments on this subject. The Government had admittedly the power to make such provision as was necessary to prevent any diminution of the public assessment, as against it no person could claim to hold at less than the pergunnah rates; and this right it transferred to the auction purchaser for the purpose of providing that the sudder jumma should be duly paid, and that the means of paying it should not be withdrawn by the improvident grants of the defaulters, and thus to prevent the possibility of an estate being sold for less than the arrear due on it. But this was an exception to the general rule regulating the powers of landholders, and not the general rule itself, and it was subject to other limitations.

I may commence by saying it is admitted on all hands that up to the Sale Law of 1822 no ryot could be dispossessed at the will of an auction purchaser. He was at most liable to pay the full pergunnah rate, and could only be ejected after refusal to pay the enhanced rent. In that year a Sale Law, Regulation XI of 1822, was passed, which remained in force until 1842, and by virtue of it the purchaser could at his option wholly avoid any tenure, unless it fell within the class contemplated in section 32 of the Regulation; but the power was one which he might or might not exercise, and it was incumbent on him, if he elected to eject, to take some clear step for the purpose of declaring the avoidance or cancellation of the tenure; if not, the privilege, right, or by whatever name it may be called, was lost for ever. It was not a power that could be exercised long, or even a considerable time, after the sale, and was limited by the law which prevented any purchaser obtaining from a tenant more than the pergunnah rates, and the prohibition against arbitrary ejectment for the mere sake of giving the land to another. This power to eject, which continued under Act 1 of 1845, was taken away by Act X of 1859, and from that very time the auction purchaser, under Act 1 of 1845 or Act XI of 1859, could only enhance, but not eject, an occupancy tenant, save after decree.

13 W. R. (P. C.), 24; 13 W. R. 469.

W. R. col. 13, p. 26; 13 W. R. p. 471; 2 W. R. 16.

12 W. R. 123, 3 R. and P. Jour. 90; 6 W. R. 102.

I note that the High Court has lately, 4 In. L. R. 863, decided that all *tenures* were *ipso facto* avoided by a sale under Act VIII of 1865. The law had been settled ten years before in the way I have stated in the text by one of the ablest Native Judges that ever sat in the High Court. See 11 D. R. 160. This decision was not even referred to on the last occasion.

If, then, we take into consideration the very few forced sales that actually took place under these sale laws, and the insignificance of the estates sold, and if we except all ryots protected by the sale law, all ryots whose position has been assured through express or implied recognition by receipt of rent or otherwise, and all ryots against whom auction purchasers have not elected by some outward sign to proceed, I confidently assert that not one in fifty thousand of the ryots of Bengal has had his position affected by the revenue sale laws.

In conclusion, I would ask the members of the Committee to consider how far it is advisable to give any further facilities for enhancement without protecting the ryots from the ejectment theory which has more or less developed within the last seven or eight years. The Government jumma of the Permanent Settlement was about Rs. 2,85,87,722 and eight-tenths of the gross rental. One-third of the land was waste it is said. On these conditions, if the whole of Bengal had been under cultivation, the gross rental would be Rs. 4,76,46,203. According to the Report of the Board of Revenue it was in 1877 equal to Rs. 13,03,78,935. In other words, the rates of rent which were intended to be fixed by the Permanent Settlement have been trebled, and the ryots are now being compelled to pay an excessive exaction of Rs. 8,27,32,733 yearly. If this annuity be valued at 20 years' purchase, it appears that we have deprived the cultivators of the enormous sum of 165 millions sterling and given it to the zemindars, who still cry for more. What large portions of this enormous income are squandered by "mismanagement, extravagance and want of self-restraint" may be gathered by a reference to the report on wards' estates for 1877-78 and other years. During the last few years Government has spent crores on famine. Every administration report since 1873 dwells on the bad feeling existing and the riots and murders which have occurred through disputes between landlords and tenants. An Act to prevent agrarian disturbances had to be passed, and a committee appointed to enquire why the ryots in Behar had abandoned their holdings and fled to Nepaul. It appears to me there is every indication that the people of Bengal are, at least in some parts, so near the extreme limit of self-support that very little more will compel Government either to expend large sums in relief, impose a poor law, or hold, as Mr. Ricketts recommended, a cadastral survey of the whole province, and record, once for all, the rights of the people before they are swept away. In the margin I give a few tables which show the present condition of the people, and from them it will be seen that since 1876 the number of forced sales of real property which always affect the poorer classes has risen from 16,287 to 32,445, or doubled within the last four years, although they had been almost stationary for the four years previous, and that the sales of movables have decreased from 16,364 to 9,329.

Thus it would appear the creditors of the impoverished people, having taken most, if not all, of their movables, are now following

Forced sales.

	Immovables.	Movables.
1871	14,201	16,064
1872	15,381	19,272
1873	15,574	19,846
1874	...	...
1875	16,287	16,364
1876	18,945	19,304
1877	23,914	15,993
1878	32,445	9,329

Suits for arrears with or without ejectment.

1871	78,100
1872	87,795
1873	1,00,748
1874	96,568
1875	1,13,640
1876	1,19,799
1877	1,23,878
1878	1,30,136

Registration of Sales and Mortgages of less than Rs. 100.

YEAR.	Sale.	Mortgage.	Total.
1871 ...	...	...	49,197
1872 ...	...	...	59,708
1873 ...	...	...	70,556
1874 ...	65,526	23,971	89,497
1875 ...	71,400	28,684	1,00,084
1876 ...	67,765	29,604	97,369
1877 ...	77,181	36,645	1,13,826
1878 ...	85,791	42,927	1,28,718

Number of thefts in Bengal.

1871	22,995
1872	27,615
1873	30,506
1874	38,234
1875	28,043
1876	29,614
1877	27,165
1878	38,234

their lands. This conclusion is borne out by other tables. In the margin it will be seen that within the last seven years suits for arrears of rent, with or without ejectment, have increased from 78,100 to the enormous figure of 130,136, and that mortgages and sales of small portions of immovable property have almost trebled within the same period. The conclusion derived from the criminal statistics is in the same direction. The number of thefts last year has again risen to almost a famine height. Can we then say that the people who, in spite of the most solemn promises of the State to the contrary, have been deprived of a sum nearly equal to the amount of the Franco-German indemnity, whose movable property is almost nothing, whose lands are being sold twice as fast as they were five years ago, who are compelled to encumber their property three times as often as seven years ago, and whose criminal population has reached the figure it was in famine times, are in a fit state to have their rents increased and their customary possession destroyed? Can we even recommend that the existing relation between landlord and tenant, which has entailed the expenditure of crores out of the public revenues for the relief of the impoverished people, should be maintained, or should we take warning from the condition of the Deccan ryots, say, before matters go from bad to worse, that it is high time to take a step backwards and carry out the promises made at the Permanent Settlement? This I recommend to the consideration of the Committee. As for myself I need hardly say that I cannot, consistently with the above conclusions, consent to any scheme of Legislature which will not protect against arbitrary ejectment, wanton aggression, all cultivators, which will not limit by law the maximum amount payable by the peasantry, and which will not restore practically to the Collector, as representing Government, the right to control the form of the leases and to determine, once for all, the local rates which shall be fair and equitable for all classes concerned.

It is hardly necessary to discuss the first nine paragraphs of Mr. Harrison's note, because they, in common with much of his later arguments, are based, as I think, upon a misconception of the propositions regarding sub-letting which were adopted by the Commission. Mr. Mackenzie and I both desire, as much as Mr. Harrison does, to discourage sub-letting; but we wish to do it with as little violence as possible to existing interests, because we believe, rightly or wrongly, that there is a mode of treating the question in which such violence is not required, and we do not think it either wise or possible to change at once by legislation the relations of millions of people and put an end to their customary arrangements. Legislation of this kind does not affect the people for years, and they go on quietly in their own way as if the particular Act had never been passed. Looking at the history of the rent system of this country, we hold that it is right for the Legislature that it is its duty to fix the maximum rate of rent payable by any ryot of any grade. We also hold that it is right to give the occupancy ryot a greater beneficial interest in his tenure by limiting still more favourably the rent payable by him, and we hope to discourage sub-letting by making it more profitable for the occupancy ryot to keep the fields in his own hands; but we doubt if we can do more in the face of the law and custom of this country, which is directly in favour of sub-letting. We believe that this method of solving the difficulty is better than the violent expedient advised by Mr. Harrison, with which I shall deal further on.

Coming to paragraph 10, *seq.*, of Mr. Harrison's note, the first point of difference with him is as to the question of forfeiture. He refers to a passage from Sir John Shore's minute, in which that gentleman said—"It is equally understood as a prescriptive law that the ryots who hold by this tenure cannot relinquish any part of the lands in their possession or change the species of cultivation without a forfeiture of the right of occupancy, which, however, is rarely insisted upon. The zemindars demand and exact the difference." Mr. Harrison then says—"I commend the prescriptive penalty for the changing the species of cultivation *à fortiori* for converting arable land into building land to Mr. O'Kinealy's consideration." Mr. Harrison alludes to what I wrote at page 17 of my note. If the members of the Committee will call to mind what took place when the question of forfeiture was debated, they will remember that Mr. Harrison, while expressing his unacquaintance with the regulations, urged as a reason—indeed the only reason based on experience—for prohibiting a ryot to build on his land, that to his knowledge a landlord in England had, in order to evade the Poor Rate, prevented labourers residing on his lands. His argument apparently was that a Bengal landlord could not or should not have any lower right. At the time I urged on the Commission the necessity in connection with every point of principle coming before us, of studying the regulations, for I thought then, and I even now think, that for any person to decide on rights affecting 60 millions of people on conclusions drawn from the experience of other countries only such as an attempt to evade the Poor Rate in England, without any reference to the history, traditions and laws of the Bengal people themselves, is, to say the least, doubtful and probably dangerous. This, then, is the rejoinder put forward by way of answer, and I accept it. In a few words it comes to this, that in 1880 Mr. Harrison supports the doctrine of forfeiture because in 1789 Sir John Shore gave it as his opinion that *khudkhast* ryots of that period were liable to ejectment (although the penalty was seldom, if ever, exacted) if they changed the species of their cultivation. But whether the framers of the Permanent Settlement, who were anxious to promote agriculture, allowed this forfeiture (if it generally existed) to continue, or whether they limited the zemindar to the right to demand a rate of rent corresponding to the change of produce, what have been the decisions of the courts since 1793, as to these points Mr. Harrison has apparently made no enquiry. Not that I can presume to blame him, for that his time has not been devoted to a study of regulations. But I think this excuse will not avail him if I can show that even the very rules for the Permanent Settlement are inconsistent with the forfeiture theory. These at least are supposed to be familiar to every revenue officer, and Mr. Harrison himself has not hesitated to give his opinion upon the letter and spirit of them.

Let me commence by saying that, since 1793 up to date, no case affirming any such power of forfeiture on the ground of a change in the species of cultivation can be found in the reported decisions. This of itself, I might fairly say, is decisive of Mr. Harrison's contention. But, further, the only case at all connected with forfeiture which I can find in the reports is inconsistent with the existence of any such right as that referred to by Sir John Shore. In 1820 the Rajah of Nuddea attempted to resume a tenure on the ground that his lessee had broken a condition which gave a power to the zemindar to resume if any crop other than indigo was cultivated, but the Sudder Dewanny held that the lease could not be construed to prevent the ryot's cultivating ordinary crops other than indigo. In this case the idea that change of crop created a forfeiture is not once hinted at, and it is the only case in the reports. But in truth such a forfeiture never existed since the time of the Permanent Settlement, and the only custom recognized was the custom of changing the rent. This is expressly laid down in section 56, Regulation VIII of 1793, that is, section 56 of the rules for the Decennial Settlement which, as I said before, every revenue officer in Bengal is supposed to know. The section runs as follows :—

"LVI.—It is expected that in time the proprietors of land, dependant talookdars and farmers of land, and the ryots will find it for their mutual advantage *to enter into agreements in every instance for a specific sum for a certain quantity of land, leaving it to the* OPTION *of the latter to cultivate whatever species of produce may appear to them likely to yield the largest profit*; where, however, it is the *established custom* TO VARY THE POTTAH *for the lands according to the articles produced*, and while the actual proprietors of land, dependant talookdars or farmers of land, and ryots in such places shall prefer an adherence to this custom, the engagements entered into by them are to specify the quantity of land, species of produce, rate of rent and amount thereof, with the term of the lease, and a stipulation that in the event of the species of produce being changed a *new engagement shall be executed* for the remaining term of the first lease, or for a longer period if agreed on; and in the event of any new species being cultivated, a new engagement with the like specification and clause is to be executed accordingly."

This, then, is what the very rules for the Permanent Settlement declare. The ryots could cultivate whatever species of produce they liked, but subject in those cases in which they did not pay a lump sum to a rent varying with the nature of the produce; and this, as Sir John Shore tells us, was the custom. The custom was maintained, but the right of forfeiture, to which casual reference was made in the passage quoted, if it ever generally existed, was neither recognized nor allowed. How possibly could the framers of the Permanent Settlement assert, as they did, that they were striving to inaugurate a new era in agricultural improvement if they at the same time imposed a forfeiture for rotation of crops? This, I think, disposes of the forfeiture theory.

The second point to which Mr. Harrison refers is the power of *khudkasht* ryots to sub-let. He states that, logically and historically, when once the ryot ceased to cultivate he lost his right to occupy; that the entire *spirit* of the regulations bear out this principle; that this is conclusively shown by the well-known fact that *pyekasht* could obtain lands at more favourable rates than *khudkasht*; and he concludes by asserting that it would be a mere waste of time if he were to maintain otherwise, and that the framers of Act X in allowing sub-letting went directly against the principles of the Permanent Settlement.

Page 7.

Mr. Harrison is of opinion that, logically and historically, the ryot could not sub-let, and he refers to the rates of the two classes of *khudkasht* and *pyekasht* ryots in support of this view. I confess I should have thought, were it not for Mr. Harrison's assertion, that logic had nothing to do with the question, and that it was a mere matter of fact whether sub-letting existed or not; but, be that as it may, the great difficulty in dealing with this view is that Mr. Harrison does not state where he has found the history he appeals to, nor mention the regulations the spirit of which, he asserts, prevented sub-letting, and he is not here that we might ask him. His sole argument seems to rest on the use of the words "cultivator" and "cultivate." But in section 8 of Regulation I of 1793 dependant talookdars and ryots are classed as "cultivators of the soil." We read constantly of "actual proprietors," but nowhere of "actual cultivators." So far as I know, there is, on the one hand, nowhere any implied or express prohibition of sub-letting, while, on the other, there is express authority for the very opposite view from before the time of the Permanent Settlement. The power of *khudkasht* ryots in Benares to sub-let without hindrance is expressly acknowledged as early as 1795 by

Chapter I, Section 9, Regulation XXXVII of that year; and the existence of sub-letting from a period antecedent to the Permanent Settlement is there admitted. Nor can I agree that a mere right of occupancy, assuming it to be merely a right of occupancy by itself, implied an inability to sub-let. It simply meant that the possessor of it had not a transferable interest, and no more. This is the view, I think, borne out by clause 7, section 15, Regulation VII of 1799 and by Regulation I of 1824. The former regulation defined tenants having a right of occupancy as those who had not a right of property or *transferable* possession; the latter proves that Government, who possessed a mere right of occupancy in salt lands, was not compelled to be the last link in the scale, but could sub-let the lands to ryots. Lastly, there is a well-known vernacular term for such a ryot; he is called a *korfa*, a term, too, used by Mr. Harrison in paragraph 19, and how he can under these circumstnces deny that sub-letting is, and always has been, recognised by law decisions and custom is, to say the least, difficult to understand; the more so as the right is recognised in the Law Reports, and is not confined to Bengal, but has existed from time immemorial in the North-Western Provinces and the Punjab. The members of the Commission will, I trust, forgive me if under these circumstances I do not admit the validity of Mr. Harrison's historical and logical objection to sub-letting.

(Sudder Dewanny, December 1853, p. 345; Cust's Revenue Manual, pp. 41-43; Act XXVIII, 1868, s. 32.)

The next matter of importance upon which Mr. Harrison disputes the correctness of our views relates to the nature of the power of enhancement given to the zemindars at the Permanent Settlement. The view we put forward was that at the time of the Permanent Settlement the Government in Bengal had already commuted the Government share of the gross produce into money payment, and that from that time the zemindars were only entitled, and only intended to be entitled, to the same rates—in short, the pergunnah rates. Mr. Harrison says—" If this view is correct, then I and Mr. Mackenzie are justified in the manner we propose to act." But he objects on two grounds—" (1) that it is not a correct view of the operation of the pergunnah or customary rates which were in effect, so far as they had any existence at all, only an intricate and ill-understood system of converting into a money equivalent the *State share* of the produce, and that this is in equity the standard to be appealed to; (2) that practically it goes behind Act X of 1859 on a point regarding which the framers intended to come to a clear decision, and this we ought not to do." There is, it appears to me, some slight confusion in the series of appeals to equity, history and expediency to be found in these sentences. *First*, if we are right historically, we are justified in our proposals; *secondly*, we are not justified in any case, because the framers of Act X intended to fix the matter, and we ought not to go behind that Act, although in another portion he declares that this Act has not as yet affected Behar; *thirdly*, though the State's or zemindar's legal share of the produce was not only intended to be commuted, but was actually commuted into money long before the Permanent Settlement, yet in equity—rank heresay in regard to Act X—we must now go behind the commutation: the matter was so intricate, and then you know the people at the time did not understand it, but Mr. Harrison's ideas of equity, I need hardly tell the members of the Committee, in no wise resemble, even in the most distant manner, the principles of that portion of our law. Even ordinary laymen, infused with a sound, healthy spirit of justice, would, I submit, hold that if the State and another person agreed that a certain money rent should be paid instead of a rent in kind, and if they acted upon the agreement for years, then if either party attempted to go behind it, he would be attempting to cheat—to commit a fraud upon the opposite party, and not to do equity. If this be so, then what is the position of the grantees of the State rights—the zemindars? Nor have I any sympathy with the argument of imputing ignorance to the Government at the time of the Permanent Settlement. I cannot understand how any man, unless he can bring overwhelming proof either from the history of the times or the regulations, can attempt to support his views by saying that the men—admittedly possessing the greatest intellect—who moulded and fashioned a scheme were ignorant of the first principles underlying it, and of the conditions it bore on its very face, especially when twenty years had been spent in discussing and laying foundations; and if a critic has and gives no authority for the imputation, I think he does more than commit a mere blunder. I make these remarks because this is not the only case in which Mr. Harrison imputes, without the shadow of a basis, ignorance to the people of 1793. At pages 16 and 17, for instance, he tells us that Lord Cornwallis fell into the self-evident error of not recognising that the State was a landholder, and in such capacity entitled to demand *rent*.

I will give Mr. Harrison's interpretation in his own words. He says—" The view I would adopt as the correct one in opposition to this interpretation of the regulations is set forth in the following propositions :—

" (*a*) The State, as such, had and has a *sovereign* right of *taxing* all classes of its subjects, including landholders and cultivators. It is necessary to refer to this, as it explains some obscurity and occasional confusion of ideas in the language of the period of the Permanent Settlement. This right it certainly did not make over to the zemindars.

" (*b*) It had also a *customary* right sometimes confused with the above, but radically distinct from it, as supreme proprietor, of taking the full market rent of the land for its own use. This proceeding is not taxation proper, any more than the Crown enjoying the full rental of the Crown lands in England, or the Queen of the lands belonging to her in the Isle of Wight is taxation. This is fundamentally the proprietary right, and was exercised in India by the State because, and only because, the State was the proprietor.

"36. As regards (*a*), it is not necessary to vindicate the proposition at any length. No one will question it. But Lord Cornwallis seems especially to mix up (*a*) and (*b*). For instance, in his arguments, paragraphs 32 and 33 of his minute of the 3rd February, quoted by Mr. O'Kinealy, he seems to regard raising the rents of an estate as imposing *taxes* on the tenants; and meets Mr. Shore's argument that as *proprietors* the landlords may raise their rents and resist interference as a claim on their behalf to impose *new taxes*. Similarly, while himself drawing the distinction in the passage quoted by Mr. O'Kinealy in paragraph 31 of his note, he says as a *reductio ad absurdum* this is not taxation, but a declaration that the property of the landholder is at the absolute disposal of Government. If he fully understood or admitted that the State was the landholder, there would be no absurdity.

"(*b*) I feel little doubt that the right of Government to the full normal rent of the land was the original foundation of the right to a specific share of the produce, but if any one questions this opinion it is of no consequence, and I waive any argument derived from it; the next proposition suffices."

The result is that, in Mr. Harrison's opinion, the State was sovereign, the State was also proprietor. It got its rent in the latter capacity, and this right is transferred to the zemindars; and Lord Cornwallis was not sharp enough, not gifted with analytical power, to distinguish between these distinct positions, hence his *reductio ad absurdum*. No authority for this novel explanation of the Permanent Settlement legislation is given. I have shown that in Bengal the State never claimed as such any proprietary rights in the soil. In all the regulations the State claimed only a definite share in the produce, and nothing more. But further, in 1822, the Court of Directors, in speaking of a draft Bombay regulation, said—"The preamble, as it originally stood in the draft prepared by Captain Williams, is much more correct than the preamble as altered at the suggestion of Mr. Prendergast (a Member of Council), which asserts the proprietary right in the land to be vested in the ruling power; whereas in the draft of Captain Williams it is stated that the ruling power is entitled to a certain share of the produce of the land." Perhaps this will satisfy the Commission that Lord Cornwallis possessed more intelligence and greater knowledge than Mr. Harrison has in the heat of argument attributed to him, and induce them to believe that if there has been any *reductio ad absurdum*, it does not lie with him. The State never claimed rent as proprietor, and the conclusions Mr. Harrison has drawn from the relation of the Crown in England to its Crown lands, are just as apposite as the connection he has discovered between the evasion of the Poor Rate in England and the position of the ryots in Bengal. I could not easily find a more striking illustration of the danger which I have constantly pointed out to the Commission—the danger arising from the great difficulty which even well-educated Englishmen who have not read the regulation find in guarding themselves against being led away by their ideas of property—than these conclusions of Mr. Harrison. What Lord Cornwallis asserted, what the regulations affirmed, and what the Court of Directors held, was that the ruling power claimed nothing as proprietor; but as sovereign it claimed a certain share of the produce which had from the earliest period been commuted into fixed money rates in Bengal. The payment of the revenue, calculated on these fixed money rates, is leased in perpetuity to the zemindars, and any unauthorized attempt on their part to increase the State's share would be simply an assumption of the powers of the ruling power which would not be tolerated. Mr. Harrison quotes a passage of my note in which I state that the Government transferred its right to realize the State share to the zemindars, and asks how I can reconcile this opinion with my general contention that the Government did not "delegate its powers of enhancement." It is difficult for me to make the distinction plainer; but I will try and put the case in another way. The chief public taxes were connected with the *towjih mehal* or land assessment, the *namuk mehal* or salt assessment, the *abkari mehal* or drink assessment. All three sources of revenue were looked upon from the same standpoint as *public taxes*. All three could be, indeed were, farmed, and the public assessment of the *namuk mehal* was added to the land revenue and realized in the same manner until the Government determined on taking into their own hands and working the *namuk mehal*, and then, though a deduction of the *sudder jumma* was made, the salt lands were retained. To Lord Cornwallis the claim of a zemindar to enhance his ryots' rents would appear as unreasonable as the claim of an abkari farmer to enhance the excise-tax would appear to us. Mr. Harrison does not look at things from this point of view. He continually treats the share of the gross produce as a share in kind and not in money; he ignores the fact that money rents were the only rents known in Bengal; and that these State demands, though called rents by Englishmen, were really land taxes; accuses Lord Cornwallis, with what justice we know, of being ignorant of what I call fraud. Surely it would be enough for a disposal of the question to say that no suit on the ground of a rise in prices can be traced in the Law Reports before Act X of 1859. But no. Mr. Harrison says at least some attempt must have been made to arrange the rates so as to fluctuate with the value of produce, otherwise it is difficult to conceive why the system should have been as difficult to explain as Sir J. Shore says it was. In the same paragraph he points out that the rates at the *Permanent Settlement* were higher than at the time of Todar Mull, and hence there must, he says, have been some *system* of enhancement. The connection which this conclusion, even if true—which I do not admit—has with the subject under discussion, as to whether zemindars can enhance since 1793, seems to me somewhat remote.

What the system of enhancement had been, *viz.*, by adding *abwabs* of all sorts to the original money rents, is fully explained in Sir J. Shore's papers. It was the avowed object of the settlement to consolidate these once for all, and stop all similar increments for the future. If enhancement on account of a rise in the price of produce was recognized, it is remarkable that no procedure is laid down for effecting it, no reference made to it in the whole code of law up to 1859, and no cases in which it was enforced can be found. Let us now turn to Mr. Harrison's other deductions :—

"(c) By a natural process this proprietary right to the full market rent of the land was in time commuted to its proximate equivalent—the right *to a specific share in the gross produce of the land* and the East India Company inherited the right in this stage from the Mogul Government.

"(d) It was precisely this right, neither more nor less, that it was intended to relinquish for a mixed contract sum to the zemindars by the Permanent Settlement.

"(e) *Per contrâ* what it was intended to secure to the ryots was the enjoyment of *their* share of the produce, but not any part of the State's share, the whole of which was transferred to the zemindars.

"(f) There is nothing in the specific provisions of the regulations to justify a claim to anything more than this share of the produce on behalf of any ryot, except such as held extensive tenures from the time of the settlement."

Now, as I have shown, the Government never claimed this proprietary right. The theory enunciated by Mr. Harrison—though it would be readily accepted by an ordinary Englishman who has not resided in India—is, if I may say so without offence, a conclusion deduced from erroneous notions of property, sovereign power, and land taxes.

Mr. Harrison in support of (d) advances the following argument :—

"39 (d). Moreover, the next proposition and the extracts which I have to adduce in support of it, and which show that this Government share of the produce was what was transferred to the zemindars, while the remaining share and that only was what it was intended to secure to the ryot at the Permanent Settlement, directly corroborate it. I maintain, then, that the fundamental idea or the Permanent Settlement was to transfer to the zemindar the Government share of the gross produce, whether paid in kind or *estimated in money*. Article 9 of Regulation I of 1793 seems to be so worded as to leave no room for possible doubt on this point. 'From the limitation of the public demand upon the lands, the net income, and consequently the value (independent of increase of rent obtainable by improvements) of any landed property, for the assessment on which a distinct engagement has been or may be entered into between the Government and the proprietor, or that may be separately assessed, although included in one engagement with other estates belonging to the same proprietor, and which may be afforded for public or private sale entire, will be ascertained by a comparison of the amount of the fixed jumma assessed upon it (which, agreeable to the foregoing declarations, is to remain unalterable for ever to whomsoever the property may be transferred) *with the whole of its produce*, allowing for the charges of management.'

"40. This makes it clear that produce and not money rental was the ultimate standard to be appealed to in any question of rent between the zemindar and ryot, and also explains the well-known rule (inexplicable on any other grounds) that if the character of the produce was changed the rent must also be changed. Mr. O'Kinealy, indeed, himself draws this very conclusion from the article, not seeming to see how fatal it is to his and Mr. Mackenzie's general contention. The rule amounts to this * * * the net rental was a fixed—a certain and not an uncertain or variable *share of the produce*. We find, indeed, that in some cases, if the rental payable by the ryots could not be in any other way determined, it was a custom to settle the amount by an actual reference to produce.

"41. The cultivators of the soil had the right, or perhaps it was the usage when excessive *money* rents were demanded of them, to offer to the persons entitled to the *rent* of their lands the alternative of receiving his dues *in kind according to the pergunnah rule of division*."—(Report of Mr. Fane, Collector of Tirhoot, in 1821.) "What is the meaning of this unless what Lord Hastings terms the 'huk of the Sircar' had been delegated to the zemindar?"

In short, the argument is this, that what the Government gave over was what Mr. Harrison calls an actual share of the gross produce. If this happened to be estimated in money, it was only a convenience, and now the zemindars have a right to go behind that cash arrangement. This was, he says, the fundamental idea of the Permanent Settlement. Mr. Harrison seems to be unacquainted with the surrounding circumstances, which explain the true bearing of the passages he quotes from the regulations and from Mr. Fane, namely, that by the rules of the Permanent Settlement itself, the settlement in Bengal was based on the money jumma of the preceding year; in Behar, on the average produce of the land. In Bengal the share of the produce had been converted into money rents from time immemorial, and these money rents only were transferred. Lord Cornwallis said that all he intended to give the zemindars was a permanent lease at a fixed rental and nothing more; that the rates, which were money rates, were to be fixed for ever by law requiring the landlords to give the ryots leases with a right of perpetual renewal at the same *rate*. And the evidence in support of this view lies on the surface of the Government records of the period. I will now call attention to some of these records which refer in express terms to ejectment and enhancement, and declare the common law of the country. I have already mentioned that in the settlement kabulyats, under which every zemindar in this country holds, there were provisions against enhancement and objection. The kabulyat of the Decennial Settlement runs as follows:—

As the jumma of revenue of the mouzah—kismut pergunnah—appertaining to pergunnah—exclusive of gunge, hats, bazars, all sayer duties and imports, and exclusive of rent-free lands, whether held under sunnud or otherwise, has been fixed on all sides annually at a sum of rupees *sicca ala* current in the province of Bengal for a term of 10 years from the beginning of 1197 B.S. to the end of 1219 B.S., I., A. B., talookdar and proprietor of mouzah, kismut pergunnah appertaining to pergunnah—one of the awals of zillah—in the province of Bengal, do declare and agree that I will pay regularly according to the kistbundi the said amount in full; that as long as the rupees of *sicca ala* may not become current throughout the province I will, in lieu of the said sum, supply to the treasury the current sicca rupees of the said province or any article of produce, which I shall obtain from the ryots at the pottah or bazar rate; that I will not advance any excuse on account of droughts or floods or lands being cut away by encroachments of river, or ryots dying and absconding, or any other excuses, all such losses shall be mine. In case of failure in the payment of an instalment according to kistbundi of each month, the officer in authority has full liberty to sell my property and realise the money unpaid. With the exception of the said jumma I shall be entitled to whatever profit may arise from my good exertions, and Government shall not share in it. I will not give any part of land of the said mouzah in burhamuther, debuttar, aima, madudmash, peeran, fakeeran, &c., or in lakhiraj without asking your consent and approval, and I will not resume that already given without your consent; and if the said lands be resumed by your orders and it is your wish that the malguzari be settled with me, I will pay the revenue to Government according to that settlement. I will keep up the embankment of the said mouzah, and if I neglect to do so I shall be held responsible for such damage as may ensue. I will at once report the property of persons dying intestate or such like cases and send a second report to Government, failing which I shall pay fine twice the value of the property referred to, or double the amount of annual profits. I will take proper care of the highroad within my boundaries, see that the travellers journey in perfect safety. I will not shelter thieves and robbers within the boundary of my holding, and if property of any person be stolen or plundered, I will seek out the thieves and robbers and the stolen property and hand over the property to the owner and the offenders to the court officer; *that I will not demand any sum beyond the account from the ryots and malguzars of the mehals in my holding, nor do them any wrong; and so long as they will keep their promises and agreements and the terms of their pottahs do not expire, I will not oust them nor resume their lands;* and will grant them immediately receipts for the amount of kists paid by them. I will obey heart and soul all the orders you have already passed or may pass in respect of settlement of the malguzari of the ryots, malguzars and surbarakars of every party. There is [illegible] doubt but these orders will be truly carried out and promote to the public welfare. Therefore I have written these few words as a kabulyat and affixed my seal and signature to this document. Dated 19th August 1790 A. D., corresponding to 27th Sawan 1197 B. S.

By the express terms of this agreement every zemindar then was, and is now subject to legislation, prohibited from exacting an increased rent or evicting the tenant. Nor will the ordinary argument prevail that our predecessors did not distinguish between rent and revenue, and did not prohibit enhancement of rent in accordance with the rise of prices. They consider to be land tax what we, under the influence of modern conclusions derived from the peculiar economic conditions of our own country, look upon as rent. This is clear from the following incident which occurred in 1792, immediately before the Permanent Settlement. An increased demand for sugar arose and with it the very question under discussion, namely, whether, according to the common law of Bengal, the zemindars or the cultivators had a right to profits arising from increased prices. This was decided in a letter from Government to the Board of Revenue, and in favour of the ryot. The letter embodying this decision has been forgotten, and I give it in full:

"Being desirous of extending the cultivation of the sugarcane, not only with a view to contribute to the supply of the present demand for sugar in England, but also to increase the general export trade of Bengal, we direct that you order the Collectors to make it an object of their particular attention to promote the cultivation of the sugarcane, and to acquaint the cultivators and dealers in sugar in their respective districts that there is every ground to believe that in future the demand for this commodity will be such as to yield to them an ample profit on any quantity that may be brought to market.

"2. We at the same time think it essentially necessary to take precautions to prevent the rapacity or short-sighted policy of individuals depriving the country of the advantages which it may reap from this demand for one of its most valuable productions. *It is to be apprehended that many of the landholders, who are unacquainted with their real interests, may be tempted by the higher price of sugar to endeavour to derive an advantage by raising the rates of the pottahs of the sugarcane lands instead of looking to the extension of the sugar-plantations for an increase of the rents of the estates. Such exactions would not only be unjust as well as repugnant to established usage and existing regulations, but entirely counteract the effects which a rise in the price of sugar must infallibly produce.* If the profit accruing from this increased price is, in the first instance, secured to the cultivators, there can be little room to doubt of their extending their plantations, and the quantity of sugar brought to market will be proportionably augmented. But if the rent of the land is raised in proportion to the increase in the price of the sugar, it is obvious that the cultivators will derive no advantage whatever from the general enhancement of the value of the commodity, and consequently the only motive which can incite them to extend a cultivation at once so laborious and expensive will cease to operate. In such case but an inconsiderable quantity would be procurable for exportation, and as this quantity would come charged not only with the amount of the additional tax on the land, but also with the further enhancements of price occasioned by the commodity being raised so much in value previous to its first delivery out of the hands of the cultivator or manufacturer, it would probably yield but little profit to the exporter. Under these circumstances the trade could neither be extensive nor advantageous, and in all probability would soon be relinquished. On the other hand, by guarding against the operation of such narrow views on the part of the landholders, the ryots will reap an ample profit from the cultivation of the sugarcane, which will not fail to induce them to increase the cultivation to such an extent as in the course of a few years will enable this country to export large quantities of sugar not only to England, but to the different parts of India where this commodity is in demand. The sugar plantations will also be a source of opulence to the ryots and enable them to increase the cultivation of grain and every other article of produce. The zemindars likewise will reap geater and more permanent advantage from the appropriation of an additional quantity of land to the cultivator of the sugarcane (which in general pays to them a much higher rent than any other article of produce), and from the opulence of their ryots, than they can possibly derive from any increase in the rates of the pottahs, and the benefits which will arise in a variety of ways to the country at large by the establishment of an extensive export trade in so valuable an article will contribute greatly to its prosperity. *We desire therefore you will order the Collectors to communicate the contents of this letter to the principal zemindars and landholders and also the tehsildars, and enjoin them to be particularly careful to prevent any enhancement of the rates of the pottahs for sugarcane lands in their Collectorships, whether the same shall have been fixed by special agreement between the ryots and landholder, or by an ancient and established usage of the district.*"

This was the law at the time of the Permanent Settlement, the law, I may say, until Act X of 1859 encroached on the privileges of the ryots and rendered them, in spite of the solemn promises of Government and the common law of Bengal, liable to enhancement on the ground of a rise in prices. Up to that time the zemindars had no power to go behind the rates, to demand enhanced rent on the ground of an increase in prices, and where the ryots were strong enough to resist their exactions, they never succeeded. In 1816 they attempted to enhance and failed, and in 1859 the landholders of Eastern Bengal in their petition to Government stated as follows :—

"Your hon'ble Council must be well aware that the prices of produce of all description have been steadily rising for many years, till at the present period they may be said to be quadruple the amount they were twelve or fifteen years ago. *The profits of this advance in prices have, during the whole period, fallen exclusively to the share of the cultivator* without any participation on the part of your petitioners, who, for anything that is discoverable, ought to receive their portion of those profits, since it is obvious that they increase the value of the lands from which they are derived."

Whatever the facts *ought to be* in Mr. Harrison's opinion, these are what they are. Zemindars never had before the passing of Act X of 1859 the right to enhance on the ground of a general increase of prices, and one of the objects of the Permanent Settlement was to prevent any such claim being raised. The Government of that time considered by declaring the common law that zemindars were bound to give pottahs at the customary rates with a right to perpetual renewal, they had guarded the ryot against all probability, indeed possibility, of such a claim being advanced, and where they held possession of lands the ryots were protected. But in regard to the lands held by zemindars, the principle of non-intervention between zemindar and ryot inculcated and enforced after the settlement was destructive of the ryots' interests. The expectations, based on the promulgation of the laws, the public spirit of the people, the interference of the courts, and the penal provisions compelling zemindars to give leases defining the rates of rent were never realized. The zemindars got the period within which they were compelled to grant leases extended, until the object of the law was forgotten and then they ignored it. I certainly never

22. We transmit to you, a separate number in the packet, a copy of a report from Mr. J. H. Harington, the Secretary to the Board of Revenue, whom we deputed on a commission to the district of Suroopur. The object of his deputation will appear from his report. Having received these papers only a few days ago, we have not had time to pass any resolutions upon Mr. Harington's propositions, but shall take them into consideration immediately after the departure of the ship now under despatch. We have thought proper, however, to avail ourselves of this opportunity of forwarding to you the report, as it contains much important information, detailed with great ability and accuracy, regarding the mode in which the zemindars collect the rents from the ryots, and which strongly proves the necessity of consolidating, as far as possible, the rent to be levied on each beegah into one specific sum. The proceedings of the Board of Revenue on Mr. Harington's reports are also forwarded to you in separate number in the packet—*Revenue despatch, 12th April 1790.*

9. We have made the following addition to the regulation for the Behar Decennial Settlement, prohibiting the imposition of new abwab or mathote, *viz.*, "If at any future period it be discovered that new abwab or mathote have been imposed, the zemindar shall be made responsible for the penalty during the whole of the period of such impositions."

10. We have further resolved that the landholders in Bengal shall be allowed, until the end of the Bengal year 1198, and those in Behar until the close of the Fusli year 1198, for the preparing and delivering pottahs to the ryots in conformity to the existing regulations, and that it be notified to the landholders, ryots and others that no engagements for rent contrary to those ordered will be held valid after the expiration of the period fixed; but in the event of any claims being preferred by them on engagements wherein the consolidation of the assul abwab and ordered on the 30th July last shall appear not to have been observed, they will be nonsuited with cost.—*Revenue despatch ,the 20th November 1790.*

5. We have also ordered the Collector of the salt districts to be furnished with copies of the instructions for the settlement of Midnapore as far as they respect the rents of the ryots, together with copies

of the subsequent orders passed relative thereto, and required him to prepare and deliver pottahs conformable to the regulations within the same period to the ryots of such of these districts as are held khas, as well as to require the zemindars to deliver the same within the like period under the stated penalty in the districts where the settlement is made with them.—*Revenue despatch, the 31st January 1791.*

20. From the proceedings which we shall forward to you by the next despatch you will find that we have anticipated your wishes respecting the pottahs to be granted by the landholders to the ryots. It is with pleasure we acquaint you that throughout the greater part of the country specific agreements have been exchanged between the landholders and the ryots, and that where these writings have not been entered into the landholders have bound themselves to prepare and deliver them by fixed periods. We shall here only observe that, under the new arrangements to which we shall presently advert, the ryots will always have it in their power to compel an adherence to those agreements by an appeal to the courts of justice whenever the landholders may attempt to infringe them.—*Revenue despatch, the 6th March 1793.*

3. You will observe that in this proclamation we have been particularly careful to provide for the equal distribution of the jumma assessed upon the estates of the several landholders, whenever a division of any of them may take place amongst the heirs of the present incumbents, or in the event of a portion of their lands being sold or transferred by public sale for the liquidation of arrears of assessment, or in satisfaction of the decree of a court of justice, or by any private act of the proprietors.

4. The provisions and declarations which we have made to this effect are equally essential for the security of the public revenue, and for enabling individuals to form an estimate of the value of the portion of any estate which they may be desirous to sell or purchase.

5. Until the produce of the lands exceed the public jumma assessed upon them in a much greater degree than they in general do at present, Government might be subjected to heavy and permanent diminutions of revenue, if upon the division of an estate or the transfer of a portion of it the fixed jumma assessed upon the whole of such estate were through error or collusion to be unequally distributed upon the several divisions. For if the proprietor of the over-rated share were to fall in arrears Government, in the event of their exposing such share to public sale for the liquidation of the balance, would be obliged to dispose of it at a reduced jumma, as no person would purchase an estate which, instead of yielding them a profit, would subject them to an annual loss.

6. The second object to be attained by the provisions in question is of the highest importance to the improvement of the country. The limitation of the demand of Government upon the entire estates of individuals as they at present exist would not have been productive of all the advantages expected to be derived from it, unless the principles by which the amount of the public demand upon the shares of estates that may be divided, and also on portions of estates that may be transferred by public sale or by any private act of the proprietor, had been at the same time clearly defined. Neither the proprietor nor the person who might have been desirous to purchase the portion of an estate would have been able to form any judgment of the amount of the assessment to which the land would be liable, and consequently the value of the property would have been uncertain. This uncertainty would have depreciated the value of landed property in general, and consequently have obstructed the improvement of cultivation by deterring individuals from employing their capitals in the purchase of lands.

7. As those provisions were equally essential to the interest of the public and the landholders, we thought it advisable to include them in the proclamation to obviate the objections that might have arisen to the declaration of them at a future period, reserving to ourselves at the same time the option of making such regulations as might be hereafter found necessary for the due attainment of the objections of them.

8. We shall only observe further with respect to this proclamation, that it reserves to you the right of imposing any internal duties you may think proper, assessing any alienated lands that may be held under insufficient tenures, and of making such regulations as you may think expedient for the protection and

heard any person, except Mr. Harrison, urge that the zemindars are entitled to higher rights than all their predecessors; that they are, in fact, entitled to go back to the time of Todor Mull, when money rents were first fixed in Bengal. Surely. Mr. Harrison ought not to object to our going behind Act X of 1859 when he desires to go years, if not centuries, behind the Permanent Settlement. A somewhat similar view to that now stated by Mr. Harrison was put forward in connection with the Upper Provinces, in which rents in kind were not uncommon, by the members of the Board of Revenue in 1822, and with what result will be seen from the orders of Government which are as follows :—

"258. The Board observe a corn rent by actual division of the produce, or an annual composition, as is the case of tithes in England, would seem the simple foundation of the revenue system.

"260. But though the Board appear to consider the principle stated by them to be indisputable, His Lordship in Council is not aware on what evidence they have admitted the allegation.

"261. *In Bengal, from the most ancient times of which we would have any clear accounts, 'the system of money rates would appear to have prevailed, and in none of the provinces would the system of division seem to have been universal.'* To what period the Board design to refer by the term ancient times and the later period of the Mahomedan power does not appear. His Lordship in Council apprehends that the endeavour to go back to the times when any general or systematic rule of division existed would lead us *far beyond the limits with reference to which the existing rights of the people will have to be settled.*"

I trust that this extract will be sufficient to show that the opinion which Mr. Harrison has imputed to Earl Moira in regard to the nature of the *huk* of the Sirkar was not held by him. The view I put forward is that held and openly expressed by Earl Moira, not merely once, but on every occasion on which the matter came before him. Thus in 1822 he said, referring to the Permanent Settlements:

"115. Though leaving the task of assessing their estates chiefly to the zemindars, who were required to issue pottahs subject to the direction of the Collectors as to the form, and of the courts of justice as to the terms, *the intention of the Government appears clearly to have been that the legal rates existing at the time of the settlement should be maintained.*

"116. The rules which prohibit the imposition of new abwabs or cesses, which prescribe the consolidation of all existing demands, which direct the issue of pottahs with the amount or rate of rent specifically adjusted, and which provide for the renewal of pottahs at determinate rates when cancelled under the rules enacted against collusive or improvident agreements, all appear conclusively to evince the design of the Legislature to protect the ryots against any arbitrary enhancement of rents. The views of Lord Cornwallis are indeed specially pronounced in his minute of the 3rd of February 1790, wherein he distinctly declares that rents were only to be raised by reclaiming waste or inducing the ryots to cultivate more valuable articles of produce: and the preambles of Regulations XIX and XLIV, 1793, by declaring the original right of Government to a certain proportion of the produce of every beegah of land, and designating the profits of the malguzars as the difference between the value of such proportion of the produce and the sum payable to the public appear to be founded on the principle that the ryots' payments were to be regarded, *not as the mere rent of land due to an absolute proprietor, but as an assessment payable to intermediate managers possessing a hereditary and transferable property in the incidence of their management.*

"117. In the Benares code the rule was laid down distinctly that all abwabs or charges introduced subsequently to the year 1187 should be abolished, and the demands on the ryots for the lands then cultivated by them was fixed by the rates of that year, the parties being allowed to make their own bargain for waste land.

"118. *The provisions of Regulation V, 1812, were in no degree designed, nor when duly considered, can they be interpreted as designed, to abridge the privileges of the ryots, or to abrogate their right to demand new pottahs at determinate rates when their existing engagements may expire or may be cancelled.*

"119. In Benares it is stated that the rule above quoted has operated to secure in some degree at least the rights of the ryots, but in Bengal and Behar the provisions in question seem to have been little effectual.

"120. In truth they are certainly somewhat wanting in that clearness which so important a matter demanded; and it cannot be concealed that the great author of the Permanent Settlement, resting too much on the notion that the established rent was as much as the ryots generally could pay, or as the zemindar could reasonably wish to demand, did not estimate with sufficient distinctness the degree in which the possession by the ryot of a right of occupancy at determinate rates must limit the proprietary interest of the zemindar, nor provide with sufficient precision for such a limitation."

So far from Earl Moira holding the opinions attributed to him by Mr. Harrison, his views were radically opposed to them; and except in the question of waste lands, there is not a single proposition in regard to the Permanent Settlement advanced by Mr. Mackenzie and myself to which he had not given the most unqualified approval; and even in the case of waste lands I have some authority on my side. In 1819 the Court of Directors, in answering the opinion put forward by Earl Moira, said—

"67. We have already enjoined you to reserve the waste lands in making any future settlement, but we have not been able to satisfy ourselves as to the nature of the interest possessed by the zemindar in the waste lands in these districts which have been permanently settled. Your construction seems to be that his power over them is absolute and unconditional, and that he is at liberty to contract for the occupation of them at whatever rates he can obtain. *It is, however, the opinion of many considerable authorities that in leases of work as well as of other lands the pergunnah rates form a standard of payment not to be exceeded.*"

This, too, is the view which I find in the reports, in which it was held that tenures created in 1214, long after the Permanent Settlement, and generally all *ryoti* holdings, could only be assessed at the prevailing pergunnah rates.

Mr. Harrison is apparently unaware of this express declaration of the Court of Directors and says—

"The opinion of the Court of Directors at this time as to the extent of the ryots' rights appears in the following passage in a despatch dated 10th November 1824: 'Should you succeed in securing to the ryots those rights which it was assuredly the intention of the Permanent Settlement arrangements to preserve and maintain, and should you in all cases where the nature and extent of these rights cannot be now satisfactorily ascertained and fixed provide such a limit to the demand upon the ryots *as fully to leave to them the cultivators' profits* under leases of considerable length, we should hope that the interests of that great body of the agricultural community may be satisfactorily secured.'

"It appears from this passage that what the Court of Directors *considered as the nearest equivalent to the ryots' share of the produce was the cultivator's profits.*"

I would suggest that the members should read the rest of this despatch, together with also the previous correspondence on this subject. In 1819 the Government of India pointed out to the Directors that, owing to the great mass of the population being ignorant of the regulations, the poverty of the people, the employment of *lattials*, the frightful abuse of the powers of distraint conferred on the landlords, and the inability of the cultivators to contest the oppressions of the zemindars save by regular suits, which often lasted six years, that, owing to all these I say, the ryots had become almost absolutely subject to the zemindars, the

welfare of the dependant talookdars and ryots, and for the good order and government of your dominions.

9. In the 20th paragraph of our letter of the 6th instant by Mr. Talbot we adverted to the measures that had been taken to oblige the landholders and farmers of land to enter into specific agreements with their ryots. These measures are detailed in our correspondence with the Board of Revenue recorded on the proceedings noted in the margin. We shall here only observe that the decisions of the courts of justice which will shortly be established agreeably to our resolutions of the 11th ultimo, must soon compel a general observance of the regulations regarding pottahs, as no landholder will be able to recover arrears by a law process from those ryots to whom he may not have executed specific agreements.—*Revenue despatch, the 23rd March 1792.*

3rd November, Mis. Con., 1792.
19th December 1792.
4th January.
15th February.

9. We have thought it advisable to order all the existing regulations respecting the Decennial Settlement which in any respect concern the natives, and also all regulations of this nature which may be hereafter enacted, to be printed and published with translations in the Persian and Bengali languages, in order that the landholders and cultivators of the soil may become acquainted with the regulations regarding the public revenue and the provisions made for securing to them the fruits of their industry. Attempts to invade their rights will be seldom made, and more rarely submitted to, when there are known and written laws which can at all times be appealed to in support of those rights.—*Revenue despatch, the 10th August 1791.*

pergunnah rates had been destroyed, and rents illegally enhanced. In answer, the Court of Directors, having approved of the proposal made by the Supreme Government, that the rights given to the ryots by the Permanent Settlement should be once for all determined by a detailed enquiry carried out somewhat in the manner of a settlement, went on to express an opinion that where those rights could not be ascertained the knot should be cut, and the ryots should be granted long leases at a profitable rate of rent. There is not a single word in the extract which militates against what I have stated to be, in my opinion, the rights of the ryots, and this is made clear by the other paragraphs of the very same despatch. I will now turn to Mr. Harrison's summing up on the vexed question of raw produce. Mr. Harrison says—

"69. My argument that rents at the time of the Permanent Settlement were rack-rents or say 'full-rents' as much as the lands could afford to pay, is a much more dangerous one to their theory than Mr. Mackenzie and Mr. O'Kinealy are disposed to admit; as the zemindars are entitled to the same *share* of the produce *now* as yielded that rent *then*, and the simple fact is that a reversion to the standard of the Permanent Settlement means sheer ruin to the ryots; in fact, the exactly opposite result to that for which Mr. O'Kinealy and Mr. Mackenzie contend."

My answer is that there is absolutely nothing new in Mr. Harrison's argument except his application of it. It was, as I have pointed out above, started by the Board of Revenue in 1822 in regard to the Upper Provinces, in which payment in kind was in some parts more common than payment in money. What is novel—and the credit attached to it belongs to Mr. Harrison—is the extension of the theory on equitable principles to Bengal where money rents had been in force from the earliest times; and whether this extension is dangerous to my interpretation of the Permanent Settlement, or to Mr. Harrison's conception of the regulations and the revenue history of Bengal, I am satisfied to leave to the members of the Commission.

"65. (2) I now come to the second point that whatever argument Mr. O'Kinealy and Mr. Mackenzie may construct out of the words of the regulations and the writings of its chief authors, these arguments were not only not accepted by the chief revenue as well as judicial officers of Government after the settlement, but also do not represent the view of those regulations taken by the framers of Act X of 1869; and that we as a Commission ought not to go behind that Act in an important question of principle of this kind."

In answer, I say that I have not constructed arguments, but stated facts. Before the Permanent Settlement, or as Earl Moira said, "from the most ancient times of which we have any accounts," money rates were the only rates in Bengal, and these rates, as they existed at the time of the Permanent Settlement, Lord Cornwallis expressly said he would fix for ever by compelling the zemindars to give leases with a right of perpetual renewal. As to the regulations themselves: By section 6 of 1794 the rates were not a share of the gross produce, but the established rates—admittedly money rates;—and by the preamble to this enactment and Regulation XLIV, 1793, these were the rates at which the ryots were entitled to hold with a right to perpetual renewal of their leases, and this Act remained in force till 1859. So far for the law. Then as to the courts, the Judges over and over decided that no ryot could be dispossessed as long as he paid the customary rates of rent—the prevailing established money rates;—they never said anything about rates of gross produce. Among the chief revenue authorities after the settlement, Earl Moira twice repudiated the gross-produce theory. The Court of Directors agreed with him, and since the settlements of the North-Western Provinces have been based on rent instead of raw produce. Lastly, there remains the view of the framers of Act X on the law. Act X was in its inception a consolidating law, and section III of the Bill ran as follows:—

"III. Hereditary ryots holding lands at fixed rates of rent are entitled to receive pottahs at those rates. *All other ryots and cultivators of land* are entitled to receive pottahs *according to the rates of rent for the time being* established in the pergunnah, * * * or, if there be no known and recognised pergunnah rates, according to the customary rates."

In short, neither Lord Cornwallis, Earl Moira, the Court of Directors, the framers of the regulations, nor the judges in their decisions, nor even the framers of Act X, ever held the gross-produce theory which Mr. Harrison now declares they supported.

I now turn to the note of Baboo Peary Mohun Mookerji. I fully concur with some of his views. The ryots were, as he shows, treated more like cattle than human beings, and the picture of their actual condition in 1827, during a period of great depression of trade, is not more strongly drawn by Messrs. Leycester and Ross than it was by Earl Moira in 1819. If the zemindars mortgaged, bartered and sold their ryots like cattle, I can only say the fact is no wise creditable either to the zemindars or the Government; and if Baboo Peary Mohun Mookerji considers that this is the state in which the ryots should be retained, I for one will not discuss the question. No doubt, Messrs. Leycester and Ross do not appear shocked at the condition of the ryots, but their decisions, opinions and the weight to be attached to them are well known from the official papers connected with their rejected memorial to the Court of Directors against the Commission which issued in 1821 to reinstate the ryots of the North-West whose rights had been destroyed by the decisions of the Sudder Court on the Sale Laws.

I concur in the view expressed by my colleague that before Act X the general body of ryots paid rent at the pergunnah rate and no more. This has been the point I have always urged; but I do not agree in his opinion that the zemindars had any right to enhance.

at all, much less without a suit. No authority for either proposition has been cited. Nor can I, I regret to say, agree in his interpretation of the Privy Council judgment to which I referred. A reference to that judgment would have shown him that it has no reference to ryots, but to talookdars. What I said was that the Privy Council laid down as a principle of law that, where a person in possession of land could not be directly enhanced at the will of the zemindar, this implies a right of occupancy in the tenant; and I argued that, inasmuch as admittedly no zemindar could arbitrarily enhance a ryot even since Act X, the Act not only did not destroy the previous customary right of the ryots in Bengal to retain possession so long as they paid the pergunnah rates, but tacitly admitted it. I regret that I did not put my argument more clearly.

But it is in regard to my figures regarding the poverty of the ryots that Baboo Peary Mohun most strongly objects. He says "instead of conjectural figures, the *actual figures* in the last administration report might have been taken." The reasons which induced me not to depend on the statistics he refers to cannot be more clearly and concisely stated than they are in the page in which they are given. The compiler of the report says—"The consequence is that as regards all middlemen below the first degree, and as regards cultivators, the *statistics obtained from the road cess returns are so incomplete as to be of no practical value.*" Nor can I attach any weight to the argument advanced by him that after all the average profit obtained by each landholder is only Rs. 62. The question is whether the ryots have been improperly deprived of their rights or not. If they have been wronged, who gained, or how the gain has been divided, is, to my mind, of little importance, and affords no justification for the wrong committed.

The position of the ryots in Bengal is, no doubt, a matter on which opinions are divided, and will probably continue so until the despatches and revenue proceedings of the period before and after the Permanent Settlement are published. I have read some of them, and I remain more firmly convinced than ever by their perusal that the ryots of this country were protected not only by the engagements entered into by the zemindar, but also by the common law from arbitrary eviction and enhancement.

J. O'KINEALY.

Remarks by Mr. Field.

In the criticism upon the note on enhancement (appended to the Digest), with which Messrs. Mackenzie and O'Kinealy have favoured me in their notes of the 20th January and 16th June 1880, respectively, there is somewhat which is open to further argument. As, however, we were tolerably well agreed as to what should be done in the future, though differing on some points connected with the history of the past, I thought that the performance of our task would not be facilitated by polemical discussion, and I therefore abstained from a controversy, the result of which would be no help to us in our labours. As these notes are now about to be published, I desire to remark very briefly upon two points.

First, as to my method in examining the regulations alone in order to discover the intention of the Legislature, and refusing to look at the discussions which led to the enactment of these regulations, or at other matter *dehors* the statute-book, I am not aware that Chief Justice Coke or Lord Westbury has ever adopted a different cannon of construction. The general rule has certain exceptions; and the rule itself has occasionally been violated; but none the less the tendency of all our modern decisions, as observed by Mr. Sedgwick in his learned work on *The Construction of Statutory and Constitutional Law*, is to the effect that *the intention of the Legislature is to be found in the statute itself*, and that *there* only the judges are to look for the mischiefs meant to be obviated and the remedy meant to be provided. There are certain matters, not, however, to be confounded with these, which are held to be discoverable from legislative journals, State papers, and other sources of information *dehors* the statute. For example, it has been decided in an American case that, although the journals of the House of representatives are no evidence of the meaning of a statute, they are the highest evidence of the fact of its enactment, or of any other fact connected with its passage. In writing the Digest I was endeavouring to exhibit *the law as it is*. I think therefore that the method which I followed was rightly followed. In determining what *the law shall be*, I, however, agree entirely with Mr. Mackenzie that we ought to explore the entire field of State literature.

The *second* point is as to my interpretation of Section 52 of Regulation VIII of 1793. I hope my critics will not think me very obstinate if I say that their arguments have but further confirmed me in the soundness of my original view. *First*, as to the argument concerned with the punctuation and the supposed printer's error, the construction of a statute cannot be made to depend upon the punctuation, which is not part of the statute—see cases quoted in *Maxwell on the interpretation of Statutes*, p. 35, and *Sedgwick's work*, p. 225. Were it otherwise, I believe the punctuation in my edition of the Bengal Regulations to be correct. It follows, and was reprinted from the Baptist Mission Press edition of 1827, which I think I am right in saying had the sanction of Government. *Secondly*, the last sentence of section 52 speaks of "restrictions" in the plural. It is impossible these *restrictions* can be included in, and cease at the end of, section 53, for this section contains a single restriction only. *Thirdly*, if Mr. Shore's minute of the 18th June 1789 be read with the proposition deduced from the arguments in the minute and appended thereto—which propositions were expanded subsequently into Regulation VIII of 1793—little doubt will remain that one restriction only was not intended. A further strong confirmation of this view is derived from section 2 of Regulation XXX of 1803, which speaks of "restrictions prescribed by this regulation, and by any other regulation published in conformity to Regulation I of 1803."

The fact that the regulations of 1793 allowed pottahs to be granted for 10 years only has, to my mind, a certain connection with the decennial re-adjustment of money rents, which I still think was contemplated. In all probability express rules for this re-adjustment and for the measurement and assessment, upon which it depended in a great degree, would have been included in the code of 1793, but for the tenderness about interfering between the zemindars and their ryots, to which I have alluded in another note.

C. D. FIELD.

The 10th July 1880.

Note on enhancement by BABOO PEARY MOHUN MOOKERJEE, *dated 18th March 1880.*

1. THE advocates of the zemindary settlement do not for a moment contend that the rights conferred by the Permanent Settlement were in existence by them before that settlement. A discussion on the subject of the relative rights of landholders and ryots before 1793 is, for all purposes with which the Commission is concerned, worse than useless. To import ideas of supposed rights enjoyed before 1793 into an enquiry into the rights of the parties after 1793 would be misleading in the construction of the Regulations of 1793. Mr. O'Kinealy has given in his note extracts from papers written at a time when the Permanent Settlement was not even contemplated. Should they guide us in the enquiry as to what were the rights conferred by that settlement? I think that a determination of the rights of the parties must solely depend upon a true construction of the laws of 1793 and of subsequent years. In interpreting a law we are not even at liberty to look to the supposed intention of the Legislature (8 W. R., Privy Council Rulings, p. 3); but fortunately in the present instance the declared intention of the legislators nowhere militates against the judicial interpretation of the laws.

2. The extracts given in the note,* pp. 8 and 21, showing that not merely no right to enhance rent was given of landholders, but that they were expressly forbidden that right, refer only to cesses and abwabs, and can by no stretch of construction support the position. Lord Cornwallis himself made a clear distinction between cesses and rent in the extract, paragraph 32, given in page 7 of the note.

3. The extract in page 8 shows clearly that the zemindar was declared entitled to get "the established rent, which in most places is fully equal to what the cultivator could afford to pay;" and that it was the highest rent obtainable, inasmuch as it would have been "a wanton act of oppression" to give the land to another for the "sole purpose" of so doing.

4. It was observed at a meeting of the Commission that the occupancy section of Act X of 1859 was a wrong done to the ryots by depriving a large number of their body of rights which they enjoyed before. What those rights were was not stated. Mr. Leycester, Senior Judge of the Sadr Dewanny Adalut, in dealing with Mr. Harrington's draft regulation, observed on the 8th of March 1827:—

"In many parts of the country the resident cultivators are the actual slaves of the landholders and liable to be mortgaged, bartered, or let to hire, the same as his oxen or goats, at his will and pleasure. * * But through what refinement or argument, what extension of intellect are those slaves, and other resident cultivators not holding under hereditary tenures, to discover that such is their lot—that they are only servants-at-will, entitled, if they get a lease, to a renewal of it." Mr. Leycester gives a picture of a state of things which happily does not exist at present; but it is clear that up to 1827 the ryots had no reason to be proud of any rights which they enjoyed, and it is not contended that any material changes were made in their position and rights before 1859.

5. Section 6 of Act X of 1859 has been declared by almost all the responsible interpreters of the rent laws of 1793 who have dwelt upon the question to be a clear encroachment on the rights of landholders, and this notwithstanding that in all contentions for judicial determination of the relative rights of the parties, the ryotti interest was always better represented as regards forensic talent than the proprietary interest.

6. On no one point are the early regulations more explicit than on this, that with the exception of certain privileged ryots the general body of ryots were liable to pay rent at the established rate, which was understood to mean fully as much as they could afford to pay. Nowhere has the principle been better explained than in the judgment of the Privy Council quoted in page 49. The lines in italics clearly refer to the right of the zemindar to enhance without a suit in court the rents of ryots who have no "valid tenure or right of occupancy." The learned writer of the note himself admits (page 52) that the ryot was liable to pay to the auction purchasers "the full pergunnah rate, and could only be ejected after refusal to pay the enhanced rent." The difficulty of determining the pergunnah rates soon became great. Section 5 of Regulation V of 1812 declared "that the pergunnah rates are in many instances become very uncertain;" and section 7 of that Regulation enacted that "the collections (shall be) made according to the rate for land of a similar description in places adjacent."

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* When I do not give any name, I refer to Mr. O'Kinealy's note dated 15th March 1880.

7. The principle which then governed the adjudication of rent was thus laid down by Mr. A. Ross, another Judge of the Sadr Dewanni Adalut, on the 22nd of March 1827 :—

"In point of fact it is impossible to establish rates of rent which shall always continue equitable, or to enforce adherence to rates arbitrarily fixed after the lands have become capable of affording higher rates in consequence of the enhanced value of their produce without conferring upon cultivators a right to a progressively increasing share of that value, a right which they never enjoyed and do not pretend to claim, and which would be superior to, and incompatible with, the right of property in the soil, which had been recognised to be vested in the zemindars." He remarks in another place—"As to the custom of the country, it has always been opposed to such a privilege, it being notorious that zemindars and other superior landholders have at all times been in the practice of exacting from their ryots as much as the latter can afford to pay."

8. Before Act X was passed and ryots were invested with rights of occupancy, there was no necessity for providing by legislation for enhancement of rent according to the increased value of produce. The landholders exacted the highest rent which the ryots could afford to pay. In enacting therefore that rents were liable to enhancement at the prevailing rate, Act X did not take away in this respect the rights which the landholders enjoyed; but inasmuch as it gave the ryots a new right which deprived the landholders of the power of compelling the ryot to agree to his terms or quit the land, it fully preserved in him the right of enhancement by providing for enhancement of rent in proportion to the increased value of produce.

9. The judicial interpretation of the law is quite in keeping with these views. Sir Barnes Peacock declared the landholder entitled to get the competition rate, and the Full Bench gave him the highest rent obtained by the rule of proportion.

10. Mr. Harrison's position that the word "rate" was very often used before 1859 to mean the ratio of rent to produce or "rate in kind" is borne out by the early regulations. Lord Cornwallis distinguished rates from rent in extract page 24. The word "*quantum*" in page 7, paragraph 32, cannot mean anything else than share of produce. The use of the words "local rates" in page 29 has the same significance.

11. Before leaving this part of the subject it is necessary to observe that the figures given at the end of the note are at best useless for purposes of generalisation. The numbers of "forced sales" represent the number of sales held by all the civil, revenue and small cause courts in these provinces in execution of decrees for money and costs. The great reluctance with which a landholder recognizes the saleable character of ryotti holdings induce me to think that only a minute fraction of these sales refer to sales of holdings for arrears of rent. The increase in the number of rent suits admits only of one explanation. Rent suits never pay the zemindars. The ryots have found it to their advantage to force the zemindars to court. The ability to pay rent by kists can be there easily ignored; the rate of interest is small, and one has simply to claim a portion of the holding as rent-free to make it rent-free. The statistics of registered deeds do not show the number of actual sales or mortgages. The increase simply shows that people now find it advantageous to register sales and mortgages of which registration is optional. May not the increase of the number of thefts be attributed to the gradual substitution of constabulary police in the place of village chowkidars? The figures, however, of which most has been made, are given in page 53. Instead of conjectural figures the actual figures given in the last administration report might have been taken. The land revenue is Rs. 3,69,94,283, and the entire valuation of estates as ascertained by road cess returns is Rs. 13,11,68,432. It has been contended that the whole of the difference (more than nine crores of rupees) is enjoyed by the zemindars "who still cry for more." It should be borne in mind, however, that road cess valuations include the assets of revenue-free and rent-free lands, and also the assets of a large number of ryots in excess of rent. If these large items be excluded, if a proper allowance be made for collection and inevitable law charges, and if the number of landholders and middlemen of different grades be taken into calculation, the landholder's share of the profits will be found to be not enormous. It is, however, necessary that we should have some idea of the reputed wealth of landholders, and I shall try to give it by the following figures taken from the last administration report :—

	Rs.
Total annual value of estates	13,11,68,432
Deduct revenue	3,69,94,283
	9,41,74,149
Deduct road and public works cess	58,85,884
	8,82,88,265
Deduct collection charges at 6 per cent.	78,70,105
	8,04,18,160

The assets of revenue-free and rent-free holdings should be deducted from this sum; but even without making these deductions, and without taking into account inevitable law charges, the above sum, when distributed over 242,246 estates and 1,099,642 tenures, gives an average profit of less than Rs. 62 per annum to each holder of an estate or tenure.

12. I shall pass on to the question of rates of rent. Pergunnahs, perhaps, owe their origin to the agricultural capabilities of different tracts of land, and to a recognition of the

habitats of different descriptions of crops. The only divisions which we sill recognise when speaking of different kinds of produce or of the condition of crops are the pergunnah divisions of districts. The Legislature therefore, in making constant reference to pergunnah rates of rent, simply recognised not merely what had come down from time immemorial, but also what was familiar to the people themselves, and what could be easily determined and acted upon.

13. It is not now necessary to examine how the pergunnah rates adjusted themselves to the progress of the times and the rise of the value of agricultural produce; but bearing in mind the age of the institution and the habits of the people, I think it is desirable that all questions relating to settlement of rent and enhancement of rent should be decided according to pergunnah rates to be fixed according to equitable principles.

14. The objections which apply to the use of the same standard of rates in the settlement of estates of a kind and forbearing or indolent landholder on the one hand, and of an active and energetic or grasping landholder on the other, is common to the scheme I advocate, and to any other that may be propounded. The condition suggested by the Commission, to the effect that the rent should never be more than doubled, affords the only reasonable check to oppressive enhancements of rents.

15. How are we to determine what should be the pergunnah rate? It is clear from the wide difference which exists in the proportion between rent and gross produce in different districts that no uniform rule will hold good with regard to all districts. In pergunnahs where there is a difference between the rent paid by the ryot, and that paid by his korfa for the same class of land, and such difference is easily ascertainable, the addition of three-fourths of this difference to the ryot's rent, and thus leaving him a margin of 25 per cent. as his profit, might be an equitable rule of enhancement. The Oudh Rent Act, 1868, fixed the rent of occupancy ryots at 12½ per cent. less than that of korfa royts, and the Punjab Tenancy Act, 1868, at 15 per cent. less than korfa rents. In districts where there is no such difference the pergunnah rate must be determined by determining the ratio which the highest rent paid by a considerable number of ryots bears to the gross produce of a certain class of land. Except in rare cases this ratio, although it differs in different pergunnahs, remains definite and unchanged in every pergunnah in spite of variations in the price of produce and periodical enhancements of rent. It is essential that this ratio should be fixed for each pergunnah by the law itself after a careful enquiry, and not left for determination by Collectors or courts. It is also necessary that not merely the ratio with regard to the staple produce should be laid down, but also those which obtain with regard to crops which form important exceptions to the staple crop. In some pergunnahs of Hooghly the ratio with regard to rice is half, with regard to potatoes one-eighth, and with regard to sugarcane one-tenth.

16. In suggesting that the ratio of rent to produce, as seen in the case of a considerable number of ryots, should be enquired into and authoritatively fixed for each pergunnah or other local division, and all enhancements of rent based upon such ratio, I simply follow the rule laid down by the Full Bench and the practice which previously obtained. It is not merely the only method understood and acted upon by the people, but it is also the only method which, without disturbing the relative rights of landholders and ryots, gives each a share of the increased value of the produce.

17. My suggestion to fix the ratio not only with regard to the staple crop, but to all the important crops which grow in a local division, is not unsupported by precedent. Regulation XXX of 1803 recognises the principle in its full extent.

18. To fix this ratio at an arbitrary figure would be as unjust to landholders as to ryots. The ratio (¼th) suggested by Mr. Mackenzie will be too high for some districts and much too low for others. It will press hard on ryots in Orissa and Dacca, where the ratio at present is less than ¼ th, while it will stop enhancement altogether in Hooghly, Burdwan, and other districts where it is considerably more than ¼th. The large proportion which the revenue bears to gross produce, nearly ¼th in Hooghly, accounts for this high ratio, but it does not in the least indicate that the rates of rent press hard on Hooghly ryots. The statistics of education, registration of deeds, &c., show that the condition of the Hooghly ryots is much better than that of the ryots of districts where the percentage is much lower.

19. Sir J. Shore, in his note dated the 21st December 1789, stated that the ratio which rent bore to produce at the time of the Permanent Settlement varied from half to three-fifths. The jummabundee which the British Indian Association embodied in their letter to Government showed ratio of ⁷⁄₁₆ths in the 24-Pergunnahs in 1190 B. E. Regulation XXVII of 1803, section 53, clause 14, fixed the Government share of the produce in fully cultivated lands at five pussaries, and the ryot's share at three pussaries.

20. The maximum ratio suggested by Mr. Mackenzie, *viz.*, that the occupancy ryot's rent shall in no case exceed 25 per cent. of the gross value of the produce of the land, will therefore be much below the ratio which obtains in different parts of the country, while it will not help us in the least towards suggesting a workable law for enhancement of rent. What help will it be to a court to know that the maximum ratio is ¼th when it sees that the prevailing ratio is less than ⅛th in some districts and more than ⅗ths in others. We had much better make no suggestion whatever than make one which ignores all the information as to the conditions and circumstances of different districts which has been placed before us during the last five years.

The 18th March 1880.

PEARY MOHUN MOOKERJEE.

Note by MR. FIELD *on enhancement and sub-letting, dated 13th April 1880.*

THE following propositions have been adopted provisionally by a majority of the Commission upon the motion of Mr. Mackenzie:—

Ryot having right of occupancy when Act comes into force to be allowed to sub-let at rent not more than ten per cent. higher than his own.

1. Every ryot who has a right of occupancy when the new Act comes into force shall be allowed to sub-let his land; but the rent payable by his sub-tenant or sub-ryot shall not in any case be more than ten [subsequently, *fifteen*] per cent. above the rent payable by the ryot himself.

No existing sub-ryot to obtain abatement by the operation of the previous rule.

2. No sub-ryot who is in the occupation of land when the new Act comes into force shall be entitled to avail himself of the preceding rule so as to obtain an abatement of his rent: but any such sub-ryot who has been three years in the occupation of his land shall be protected from arbitrary ejectment by his landlord so long as he continues to pay his rent.

Ryots who acquire a right of occupancy under the new Act to have right of sub-letting given by Rule 1.

3. Ryots who acquire a right of occupancy under the new Act shall have the same right of sub-letting as is given by Rule I to ryots who had acquired the right of occupancy before the Act.

Occupancy ryots having more than 100 beegahs to have same right of sub-letting as occupancy ryots having less than 100 beegahs.

4. Occupancy ryots holding land over 100 beegahs in extent shall be allowed to sub-let in the same manner as occupancy ryots holding less than 100 beegahs, and subject to the same restrictions, their *korfas* or sub-ryots being treated in the same way as the *korfas* of small holders.

Special rule for *jungalburi* ryots holding more than 100 beegahs, and their sub-tenants.

5. But when an occupancy ryot holding over 100 beegahs can show that his tenure was originally of the nature of a *jungalburi* tenure, *i.e.*, that he came on the land as a reclaiming capitalist, he shall be exempt from these rules. His rent shall not, in that case, and in the absence of contract, be more than ten[a] per cent. of the gross produce, and the rents of his under-tenants of all grades shall be regulated by the custom of the district, if any such custom can be clearly established, or shall be enhanced only in the same ratio as the rent of the reclaiming tenant who holds direct from the proprietor.

Maximum rent payable in kind not to exceed *fifty* per cent. of the gross produce.

6. The maximum rent of any ryot paying rent in kind shall not exceed *fifty* per cent. of the gross produce[b].

Maximum rent payable in money not to exceed the value of *forty* per cent. of the gross produce.

7. The maximum rent of any ryot paying rent in money shall not exceed the value or price of *forty* per cent. of the gross produce.

Ordinary money-rent of occupancy ryot not to exceed value or price of 25 per cent. of gross produce. Exception where ryot can prove custom, &c.

8. The maximum money-rent of an occupancy ryot shall ordinarily not exceed the value or price of twenty-five per cent. of the gross produce;[c] provided that a ryot may show that he is by custom entitled to hold at a lower rent than this would give; or that an enhanced rent calculated in this way would be more in proportion to the present gross produce than the former rent was in proportion to the former gross produce; or that he is, for equitable or other reasons, entitled to hold at a lower rent, as, for example, where he had paid a fine or *salami*.

Value or price to be calculated on a reasonable average of years, &c., under rules made by Board of Revenue.

9. The value or price mentioned in Rules 7 and 8 shall be determined as far as possible upon a reasonable average of years, the price at harvest time and in the locality being taken. This shall be done under rules made by the Board of Revenue, and *not otherwise*.

Calculation to be made for staple crops. Collector to settle staples. Special crops how to be treated.

10. The calculation shall be made upon certain staple crops, such as rice, &c.,[d] and the Collector shall determine what shall be the staples for his district. [Case of special crops, mulberries, sugarcane, &c., being proposed to be met by a lower percentage, say *ten* per cent.]

Collector to determine value of gross produce for each class of land. Such values applied to maximum rents under previous rules to form *Table of Rates*.

11. The Collector shall determine the value of the gross produce per beegah for each class of land within selected local areas. The values so determined shall regulate the maximum rents mentioned in the previous rules, and constitute a *Table of Rates* for such areas.

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[a] Should be *fifteen* per cent., or he will be in a worse position than the ordinary occupancy ryot.

[b] *i. e.*, for ordinary staples. No rent in kind for special crops.

[c] For ordinary staples, *i. e.*, and say *ten* per cent. for special crops, unless the custom of the district supports a higher rate.

[d] See section 6 of the Bill of 1876, which enacts that the calculation shall be made on the ordinary staple crop of the district, an additional assessment not exceeding one-half more of any enhanced rent, being allowed for more valuable crops. Arungzeb took a smaller share for sugarcane, opium, ginger, and whatsoever produce required the extra labour of watering from wells.

Ryots' rents may be enhanced to limit of rates so determined, subject to certain checks, and to the proviso in Rule 8, &c.

12. Landlords shall be at liberty to enhance all ryots' rents up to the limit of the rates so ascertained, subject, however, to the proviso in Rule 8, to contract, and to the following conditions: (*a*) that the enhanced rent shall not be more than double the former rent, (*b*) that the enhancement may be gradual or progressive.

Existing rents not to be lowered by these Rules.

13. These rules shall not be applied so as in any case to lower or reduce existing rents.

No further enhancement for ten years.

14. When rents have been once enhanced there shall be no further enhancement, except on the ground of alluvion, for ten years.

Commutation of rent payable in kind into a money-rent.

15. Rent payable in kind may be commuted into a money-rent upon the above principles at the instance of either the landlord or tenant.

It is now further proposed that—

When landlords unable to settle rents on the above principles by means of the ordinary tribunals, a special commission may be appointed—On what principle to proceed.

16. When all or the majority of the landlords in a tract of country are unable or unwilling to effect a settlement of rents upon the above principles and by means of the ordinary tribunals, the Lieutenant-Governor may, if he thinks fit, appoint a commission at their expense to make a *Table of Rates* for any district or part of a district. The rates applicable to occupancy ryots shall be so fixed as to give to such ryots, as far as possible, two-thirds of the increase of profits which has accrued during the preceding *seven* (*ten ?*) years. The rates payable by non-occupancy ryots other than *korfas* shall not exceed the maximum payable by occupancy ryots, *i. e.*, the value of twenty-five per cent. of the gross produce.

Ryots under mukarraridars to acquire a right of occupancy.

17. Ryots holding under *mukarraridars* shall be entitled to acquire a right of occupancy as against such *mukarraridars*.

First draft of Enhancement Sections felt to be deficient in instruction and guidance for settling rates.

All the members of the Commission felt that the enhancement sections which I have drafted in accordance with our first set of resolutions, were deficient in matter of instructions and guidance for the settlement of rates; and that it was very desirable, if possible, to lay down some principles upon the basis of which the revenue authorities should work in order to the preparation of the *Table of Rates*. We are indebted to Mr. Mackenzie for the above set of propositions as an effort to afford that guidance and instruction which we all wish to make a constituent part of the Bill, if we can see our way to doing so in safety.

No general rule discoverable for settling or enhancing rents in all cases and under all circumstances.

After discussing the matter in all its details at several meetings, I think we are all agreed that it is not possible to devise a general rule for settling or enhancing rents, and that no patent remedy of universal application is feasible. For myself I am satisfied that any attempt to formulate or lay down such a rule would be eminently unsafe. That we have not been able to discover any such rule is doubtless due to the same cause as the failure to discover the philosopher's stone—*De non apparentibus et de non existentibus eadem est ratio.*

Mr. Shore's opinion.

In June 1789 Mr. Shore wrote:—"It would be endless to attempt [to describe?] the subordinate variations in the tenures or conditions of the ryots. It is evident that in a country where discretion has so long been the measure of exaction, *where the qualities of the soil and the nature of the produce* suggest the rates of the rents, where the standard of measuring the land varies, and where endless and often contradictory customs subsist in the same district and village, the task must be nearly impossible. The Collector of Rajshahye observes upon this subject, that 'the infinitive varieties of soil, and the further variations of value from local circumstances, are absolutely beyond the investigation or almost comprehension not merely of a Collector, but of any man who has not made it the business of his life.' * * The regulation of the rents of the ryots is properly a transaction between the zemindar or landlord and his tenants, and not of the Government, and the detail attending it is so minute as to baffle the skill of any man not well versed in it."—(Minute of 18th June 1789, paragraphs 231, 433.)

Principle of settling revenue by a comparison between cost of production and value of produce abandoned in 1833.

The principle of settling the revenue by a calculation based on a comparison between the cost of production and the value of produce was deliberately abandoned in 1833, when section 2 of Regulation IX of that year repealed so much of Regulation VII of 1822 as prescribed, or was understood to prescribe, that the amount of *jamma* to be demanded from any *mahal* should be calculated on an ascertainment of the quantity and value of actual produce or on a comparison between the cost of production and value of produce. Lord William Bentinck had been of opinion that this rule must act as a check on industry and discourage cultivation. The Court of Directors agreed in this view, and some four years later (*see* despatch of 12th April 1837) they drew particular attention to the point in "special connection with the cultivation of cotton, sugar, coffee, and other staple commodities suited to the home markets," remarking as follows:—"No better means of securing this good object," *i.e.*, developing the resources of the country, "can be pointed out than the adoption of such a mode of assessment as shall leave the cultivator in possession of an ample and encouraging remuneration for the exercise of his industry in the growth of articles adapted to the demands of the home market.....It is the productive power of the land, and not its actual produce, that should be taken as the guide in making the assessment. By this mode the best description of encouragement is given to the cultivator to extend cultivation and raise crops immediately beneficial and profitable to himself, and such a system, we have on a former occasion observed and are still of opinion, would not ultimately be found detrimental to the interests of the State."

Remarks of Board of Revenue in 1833.

The Board of Revenue remarked on the 12th November 1833 that the only safe and practical foundation for the calculation of the public revenue was the rent *actually paid* by the several tenants, of whatever class or description, and that when it was found impossible to obtain this information in the estate under settlement, the rent paid for land of the same quality and under similar circumstances in the adjoining estates was the best criterion.

Directions for Settlement Officers in the North-Western Provinces.

In the *Directions for Settlement Officers in the North-Western Provinces* it is said: "The object of the fiscal part of the settlement is to fix the demand upon the land for a certain period of years prospectively, within such limits as may leave a fair profit to the proprietors and create a valuable and marketable property in the land. This end cannot be attained with certainty by any fixed arithmetical process, or by the prescription of any rule that *a certain portion of the gross or net produce of the land shall be assigned to* the Government and to the proprietors. If the net produce of any one year, or any given number of past years, could be determined, it would afford no certain guide to the produce of years to come............ Not only would the actual ascertainment of the net produce of an estate be a fallacious basis on which alone to found any certain determination of the demand, but it is in itself often more difficult to accomplish, and the attempt to effect it is likely to produce many serious evils ....It is better to acknowledge at once that the operation is not one of arithmetical calculation but of judgment and sound discretion, and to proceed openly on that assumption." These remarks, the result of experience, are as applicable to rent as to revenue.

Settlement rules in the Lower Provinces of Bengal.

In the rules for settlement in the Lower Provinces of Bengal the above observations of the 12th November 1833 are quoted for instruction. There is also the following passage:—

Compare the *Ayeen Akberi*:—"Every country has something peculiar to itself. Some soils produce crops almost spontaneously, whilst others require the greatest exertions of labour and skill. Much depends upon the vicinity or distance of water, and the neighbourhood of towns ought also to be a matter of consideration. So that it behoveth the officers of Government, in their respective districts, to attend to every one of those circumstances, that the demands of the State may be fixed accordingly".—Vol. 1, p. 347.

"Fertility of soil is not the only circumstance which regulates the power of land to pay rent. The demand for land as affected by the denseness or otherwise of the population, the salubrity or inclemency of the climate, and the abundance or scarcity of good culturable soil in the vicinity, must all be taken into account. In *ryotwari* assessments, such as are frequently necessary in Bengal, the most minute attention to local advantages and disadvantages is often indispensable. Inferior land in an advantageous position will sometimes be found paying higher rent than better land less favourably situate. Land in the middle of a plain, in every respect the same as land on its edge, may be found paying double the rent of the latter, because less exposed to trespass from cattle. So also land near a village may be found paying more than land of the same description at a distance from it. No attempt should be made to remedy these necessary discrepancies: the only practicable way, indeed, in which uniformity could be attained would be to reduce all the rates to the lowest level......Assessment should invariably be fixed according to the value and capabilities of the land, and not according to produce."

Griffith's valuation of the lands in Ireland.

The intention of the Legislature in passing the General Valuation Act for Ireland (15 and 16 Vic., Chap. 631) was that a valuation of the lands in that country should be made on a uniform principle and scale of prices for agricultural produce so as to insure that the relative value of the lands within any country, though ascertained at different periods, and also that the relative value of the lands of different and distant counties, though ascertained at different and distant periods, should be the same. The most precise and elaborate rules were laid down for the guidance of Commissioners of Valuation under the Act. Their attention was directed to the nature of the soil, whether argillaceous, siliceous, calcareous, or peaty; to the nature of the sub-soil; to the appearance of the crops; to tables of produce for arable land, and tables of fattening power for pasture land; to situation, elevation and climate; to manure and facilities for obtaining it; to proximity to cities, towns and villages; to roads and means of communication; in fine to every point that could by any possibility be supposed to influence the value of land, or create grades of difference in such value. Chemical science contributed its valuable aid, and the task of valuation was assisted by tables based upon the most careful experiments. The object of the valuation was not the settlement of rent, but the adjustment of taxation, and thus many motives for deceiving or misleading were removed. The operation of the Act created a class of skilled valuators in Ireland, and the results achieved were probably the most successful that could be obtained by this method. Indeed, Griffith's Valuation is constantly appealed to in determining the value of tenant right under the Irish Land Act of 1870. Yet the former able and very experienced Judge of the Landed Estates Court in Ireland has given the following deliberate opinion:—"The settlement of rent by valuation appears just only to persons who do not know what a valuation of land is, and always must be. The value certainly is that rent which a solvent tenant will be ready to offer for the farm on a lease of moderate duration. When a landlord wishes to set his land, the proposals made by persons willing to become his

The Right Hon'ble M. Longfield's opinion as to settlement of rent by valuation.

tenants settle the value of the land beyond any possibility of dispute.[1] The solvent tenant will take care not to offer a rent which the profits of the land will not enable him to pay. He is under the strongest inducements to discover the real value of the land. He may consult an experienced valuator if he thinks proper; but he rarely takes this step, as he generally knows the value of the land better than any one whom he could consult. He often talks the matter over with his friends to know their opinions, and then to form his own judgment. *The professional valuator forms a more rapid judgment, and unless he is living in the immediate neighbourhood of the land his judgment is not worth much.* A serious difference of value between two fields is often caused by circumstances which the most careful examination would fail to detect. The tenant does not merely look to the soil, and the condition of the roads, the fences, and the buildings: he knows what treatment the land has received for several years, the nature and quality of the crops, whether cattle appeared to thrive well on the land, what rent was usually paid for that and other similar land in the neighbourhood, and whether the tenants who paid such rents were prosperous or the reverse……………… In the year 1865 I made the following observations, and I have seen no reason to alter my opinion since I made them: 'Many other things are to be considered, but I have said enough to show how utterly inadequate to the occasion is the cursory inspection that is made by a professional valuator………………If the valuation is made for the purpose of taxation, it is generally made low, for then there is less likelihood of an appeal. If the owner gets it valued for the purpose of a sale, the valuation is apt to be high, as more likely to suit the interests or wishes or feelings of the employer.'" Having given some startling instances of differences in valuations made by a civil engineer, and by the ordnance valuation, he continues—"It may be asked—'Is there no mode of valuing a farm? Must the tenant make a mere guess at what he is to offer?' No. The landlord and the intending tenant have means of knowing the value of the land which no other person is likely to possess and to employ…… Every one who has had any experience knows that nothing can be more uncertain and undetermined than the valuation of land. It is not uncommon to see two valuators differing enormously in their estimates, and yet neither suffering in reputation as if he had made a discreditable mistake. It is probable that the value as fixed by any tenant-right measure would be less than half the rent which a solvent tenant would be willing to pay. All future valuations would be still more uncertain, for as soon as the possession of land ceased to be a subject of contract by mutual agreement, the valuators would have no average market value to refer to, and would form their estimates on the wildest principles."

Rule of a share of the produce, part of the Hindu system. Examination of the mode of commuting this share into a money rent.

The rule of taking from the cultivator a share of the produce in kind, of making this share the ultimate standard for adjustment of a money rent, was an essential portion of the fiscal system of the Hindus. The Mahomedans found it in existence, and, having something akin to it in their own institutions, allowed it to remain, but subsequently engrafted some innovations upon it. It would appear that a tendency to convert the share of the produce into a money rent developed itself at an early period. It will be important to examine the principles upon which this commutation was effected in former times. The first account of these principles to which I shall refer is that given in Lieutenant-Colonel Briggs' "*Land Tax in India*" as to the *modus operandi* of Hurrihur 'Roy, one of the first sovereigns of Canara. He is said to have had regard more to the quality of the land than to the quantity. One-half of the grain, including the straw, was given to the cultivator; the other half was divided into three shares, of which one share was given to the sovereign, half a share to the church, and one share and a half to the proprietor. The landlord thus got twenty-five per cent. of the gross produce. The principle prescribed for commutation into money was that an extent of ground, requiring two-and-a- [illegible] ntis of seed to sow it, should pay one ghetti pagoda. Seed was calculated to yield [illegible] and the money payments were calculated on these data without any attempt at [illegible]

[illegible] examine the assessment carried out by Rajah Todar Mal under the orders o [illegible] be convenient to notice certain terms of Mahomedan law. The produce of land in Mahomedan countries has always been subject to one of two imposts—*ooshr*=tithe, or *khiraj*=tribute. *Ooshr* is payable on [illegible] e believers or *Mooslims; Khiraj* is payable by infidels, and in some exceptional cases by *Mooslims. Khiraj* is of two kinds—(1) *mookassimah*, payable out of the actual produce only, and (2) *wuzeefa* payable whether there be any produce or not. Again, *mookassimah* is payable on every crop produced, while *wuzeefa* is payable but once a year. Before the Mahomedans acquired power in India, the Hindu kings took a share of the produce. Manu gives this share as *of grain an eighth part, a sixth, or a twelfth according to the difference of the soil and labour necessary to cultivate it.* The Hindu kings apparently took this share in kind, as the more general rule; but the Mahomedans, whilst adopting this source of revenue, soon took

Ooshr or [illegible]
Khiraj or tri[illegible]

Share of grain taken as revenue according to Manu.

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[1] This light is wanting in Bengal, it will be remembered, save in some exceptional parts of the country where something like competition rents have been created by the demand for land caused by denser population. In a country like this it may be well to bear in mind that these competition rents are regulated not so much by capital seeking a fair return for its employment, as by a tendency to cottierism, under which rents will be offered which no tenant can pay and live by the land, the result being a demoralizing antagonism, pressure by the landlord to squeeze as much as possible out of the tenant, and passive resistance by the latter in order to retain what he can,—certainly in the amount to be paid; and regular payments are above all things essential to a healthy relation between landlord and tenant.

steps to abolish the custom of dividing the crops. This change was inaugurated by Shere Khan and Selim Khan, and fully carried out by Akbar. I have given a brief account of Akbar's mode of proceeding, or what is termed Todar Mal's Settlement, at page 198 of the Digest, but it will be desirable to examine it more carefully on the present occasion.

Account of Todar Mal's settlement under Akbar.

Lands were divided into four classes, *viz.* (1) *poolej*, or that which was cultivated for every harvest and never allowed to lie fallow; (2) *perwoty*, or that which was allowed to lie fallow for a short time in order that the soil might recover its strength; (3) *checher*, or that which had lain fallow three or four years; and (4) *bunjur*, or that which had been left uncultivated for five or more years.

Revenue of on Poolej land.

Poolej land paid revenue every year. Ballie thinks that the principle of the *wuzeefa* was rigorously applied to this class of land. The share taken by the Government was one-third, but it was calculated in this way. There was three kinds of *Poolej*—best, middling and worst;—the produce of a beegah of each kind was taken, and one-third of the aggregate of the produce of the three beegahs was assumed to be the average produce. One-third of this average was the Government revenue—see Gladwin's *Ayeen Akbery*, Vol. II, p. 355. The following is a calculation for wheat:—

	Poolej, best.	Poolej, middling.	Poolej, worst.		Total.		One-third of total equal average.		One-third of average, being the Government demand.	
	Mds.	Mds.	Mds.	s.	Mds.	s.	Mds.	s.	Mds.	s.
Produce ...	18	12	8	35	38	35	12	38⅓	4	12¾

The *Ayeen Akbery* contains a table showing this calculation for thirteen crops included in the spring harvest, *viz.*, wheat, vetches, adess, barley, linseed, madsfer arzen, mustard, peas, fenugreek, and shally-kow. For musk-melons, ajwain, onions, and other green herbs the revenue was ordered to be paid in ready money at certain fixed rates. There is another table showing the calculation for nineteen crops included in the autumn harvest, *viz.*, molasses, cotton, shaly mushkeen, common rice, mass, mowng, jewar, shamakh, koderem, sesame, gall, turyeh, arzen, lehdereh, mendow, lubyeh, keawdery, kelet and berty. The revenue on indigo, kuknar, pan, turmeric, singarhar, hemp, kutchalu, kuddoo, henna, cucumbers, badinjan, radishes, carrots, kerelah, tyndus and katcherah was ordered to be paid in ready money according to certain fixed rates. Mr. Elphinstone observes that the *Ayeen Akbery* does not tell us how the comparative fertility of fields was ascertained, though it is probable that the three classes were formed for each village in consultation with the inhabitants, and that the process was greatly facilitated by another classification made by the villagers for their own use, which probably subsisted from time immemorial (and in which a classification of soils, something like that adopted in the Irish Valuation System, was an important point). It also does not appear whether every cultivator had to pay the average rate, even though he did not hold equal portions of each kind of *poolej*, in which case only his assessment would be equable. In this case, however, there would be no object in making an average, as the result would be the same without it. In the case of the average given above for wheat, it will be seen that, while this average rate gives less than a third share of the produce for the middling kind of *poolej*, it gives more than a fourth for the best kind, and nearly half for the worst kind. If the average rate was levied from all cultivators indiscriminately, the cultivator who had most of the best land was very lightly assessed, while he who had most worst land was very heavily assessed, the result in each case being the reverse of what would have been fair and reasonable.

Mode of commuting Government share of produce of *poolej* land into money.

The rate at which the Government share of the produce of *poolej* land was to be commuted into money was ascertained and determined in the following manner: The prices for nineteen years, *i.e.*, from the *sixth* to the *twenty-fourth* year of Akbar's reign, were collected after the most diligent investigation. This period was selected because nineteen years being a cycle of the moon the seasons were supposed in this time to undergo a complete revolution. The calculation of the money rates was made upon the average of these nineteen years. It would appear from the *Ayeen Akbery* that the revenue for *poolej* land was required in money according to the rates so calculated. Mr. Elphinstone, however, thinks that these were only maximum rates, and that every cultivator, who thought the amount claimed too high, might insist on an actual measurement and division of the crop.[1] Be this as it may, it is clear from the *Ayeen Akbery* that the Government did not succeed at first in collecting these rates, that the cultivators exclaimed against them as exorbitant, and that the ten years' settlement to which I shall presently allude was the result.

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[1] Elsewhere in the directions to the *Amilguzar* or Collector of the Revenue it is said:—"Let him not be covetous of receiving money only, but likewise take grain. The manner of receiving grain is after four ways. FIRST, *Kunkoot*; *Kun* in the Hindu language signifies 'grain,' and the meaning of *Koot* is 'conjecture' or 'estimate.' The way is this: The land is measured with the crops standing, and which are estimated by inspection. Those who are conversant with the business say that the calculation can be made with the greatest exactness. If any doubt arise they weigh the produce of a given quantity of land consisting of equal proportions of good, middling and bad, and form a comparative estimate therefrom. SECOND, *Buttai*, and which is also called Bhaolee is, after the following manner: They reap the harvest, and collecting the grains into barns, there divide it according to agreement. But both these methods are liable to imposition if the crops are not carefully watched. THIRD, *Khet Buttai*, when they divide the field as soon as it is sown. FOURTH, *Lang Buttai*, they form the grain into heaps of which they make a division. Whenever it will not be oppressive to the subject, let the value of the grain be taken in ready money at the market price. If an husbandman sows his land with the best kinds of grain, let there be remitted the first year a fourth part of the rate for *poolej* land. If upon making the measurement the kinds of grain appear to be better, although the quantity of land be less than was agreed for, so that the difference causes no deficiency in the revenue, the Amil shall not express any displeasure, and in every instance he must endeavour to act to the satisfaction of the husbandman..................

Revenue on *perowty* land.

Revenue on *checker* and *bunjur* lands.

Perowty land was also divided into three kinds, and an average was made in the same manner as for *poolej*; but the *kheraj* or revenue was paid only when it was under cultivation, and not when it lay fallow. *Checker* was land which, either from excessive rain, or by reason of inundation, had suffered so much that the husbandman found difficulty in cultivating it. When brought under cultivation it paid two-fifths of the produce for the first year, three-fifths for the second year, four-fifths for the third and fourth years, and in the fifth year it paid the full demand as *poolej*. According to the *Ayeen Akbery* the revenue of *checker* was taken, according to circumstances, either in money or in kind. *Bunjur* was land which had been greatly injured by inundation, and it enjoyed still more favourable terms for the first four years, after which it was treated as *poolej*. Further, "it is ordered," says the *Ayeen Akbery*, "that in bunjur there shall be taken from each beegha the first year only one or two seers; the second year five seers, the third year the sixth of the produce together with one *dam*, the fourth year a fourth of the produce, and after that period as *poolej*. But this indulgence differs according to circumstances. The husbandman may always pay his revenue in money or in kind as he may find most convenient. The *bunjur* land at the foot of mountains, and that in the pergunnahs of Sembeleh and Beiatch do not continue in that state, for such a quantity of new earth is brought with the inundation that when the water subsides the soil is better than most *poolej*. However, His Majesty, out of the abundance of his beneficence, reckons it only as common *bunjur*. The husbandman has his choice to pay the revenue either in ready money or by kunkoot or by bhaolee."

Akbar's plan finally changed into a ten years' settlement.

Akbar's system first dealt with individual cultivators, and the revenue was to be paid at the commuted money rate upon the actual produce year by year. It is said that he adopted this course because he and his ministers were aware that any fixed money assessment of so large a portion of the produce would very soon prove unequal. In less than ten years it was found that this plan would not work, and the result is given in the *Ayeen Akbery*—"It was found very difficult to procure the current prices of grain from all parts of the kingdom: and the delays that this occasioned in making the settlements were productive of many inconveniences. In order to remedy these evils His Majesty directed that a settlement should be concluded for ten years. For the above purpose, having found an aggregate of the rates of collection from the commencement of the fifteenth year of his reign to the twenty-fourth, inclusive, they took a tenth part of that total as the annual rate for the ensuing ten years. From the twentieth to the twenty-fourth year the collections were made upon grounds of certainty, but the five former ones were taken from the representations of persons of integrity, and, moreover, during that period the harvests were uncommonly plentiful." "Thus," says Lieutenant-Colonel Briggs in his work on *The Land Tax in India*, "it appears at a very early period the scheme of Akbar to assess the fields was discovered in practice to be full of embarrassment, and, before his measurement even was completed, he was reduced to the necessity of assessing whole villages and leaving it to the people themselves to distribute the portion payable by individuals. This is one of the most instructive lessons we could have of the extreme difficulty of assessing land in any portion which approaches to the full profit of the landlord. The actual measurement and the nominal assessment of Akbar exist at the present day in the village records of those countries wherein they were introduced, but they may be deemed rather objects of curiosity than of utility."

It may be observed that Raja Todar Mal and Mozaffar Khan were jointly appointed to the Vizarut in the fifteenth year of Akbar's reign. It was from this year that the calculations for the ten years' settlement were made. In all probability it was this settlement, and not the original attempt to take as revenue the value of a fixed share of the produce, which made the name of Todar Mal so celebrated, and if Lieutenant-Colonel Briggs' view of this settlement be correct, the original project was either wholly abandoned or materially modified. Mr. Elphinstone, however, takes a view somewhat different. He says that the commutation rates were occasionally re-considered with reference to actual market prices, and he concludes his account with the following remark:—"The above measurements and classifications were all carefully recorded; the distribution of land and increase or diminution of revenue were all yearly entered into the village registers agreeably to them; and they still continue in use, even in parts of India which had not been conquered in Akbar's time, and where their own merits have since introduced them.—" (History of India, page 473.) Speaking with especial reference to Bengal, Mr. Shore says in his Minute of the 18th June 1789:—"In every district throughout Bengal where the license of exaction has not superseded all rule, the rents of the land are regulated by known rates called nirk, and in some districts each village has its own. These rates are formed with respect to the produce of the land at so much per beegha. Some soil produces two crops in a year of different species, some three. The more profitable articles, such as the mulberry plant, betel leaf, tobacco, sugarcane and others, render the value of the land proportionally great. *These rates must have been fixed upon a measurement of the*

Whenever there is a plentiful harvest, let him collect the full amount of revenue, and not leave any balances to be realized from future crops. If any one does not cultivate khorajee land but keeps it for pasturage, late there be taken yearly from a buffaloe six dams, and from an ox three dams, but calves shall be permitted to graze without paying any duty. For every plough there shall be allowed four oxen, two cows and one buffaloe, from whom likewise no duty shall be taken for pasturage." Forty dams make one rupee.

land, and the settlement of Toran (Todar) Mal may have formed the basis of them." It is possible that Todar Mal succeeded in carrying out the original scheme, although his predecessor, Khajeh Abdul Majeed Asof Khan, had failed. Much depended upon the results of an accurate measurement and the collection of actual information as to prices and other matters. We know from the *Ayeen Akbery* that the measurements were systematically carried on, and when the village registers were complete, the assessment based on *actuals* must have been very different from that at first made upon the information supplied by "persons of integrity."

Objections to the principle of making revenue or rent a share of the gross produce.

Some of the objections to making revenue or rent a fixed share of the produce will be found discussed in Mill's Political Economy, Vol. I, pp. 366, &c., in connection with the *Metayer* system. The most important of them is this: The cultivator, it is said, will be unwilling to expend his labour and capital in effecting an increase or improvement in the crop, when the State or his landlord will, without contributing anything to bring about this increase or improvement, take a share therein. Such is said to have been the effect of the tithe. Mr. Elphinstone adopts this view, and the Court of Directors were clearly influenced by it in their despatch of the 12th April 1837. It is beyond doubt that this objection is a good one; but Mr. Mill shows, I think, that the real force of it has been over-estimated. Probably the most serious objection to the principle is the difficulty of selecting any particular share, which will be applicable with equal fairness to all crops and all soils. If this difficulty could be overcome by graduations in the rule itself, it may be that there are really no stronger objections to this principle than can be urged against any other that has hitherto been suggested for adoption. Some of the other objections advanced are not so much objections against the principle itself as against the method of putting it into operation. There are three modes by which it may be carried into operation:

First, the share may be taken in kind at harvest time.

Secondly, the share may be selected at harvest time and its value may be estimated at the prices then current, the rent in kind being thus commuted into a money rent on each occasion. Either of these methods is attended with too much friction. The experience of Behar is strong to prove this. The peculiar characteristics of the people, a tendency on the part of the stronger to oppress, an equal readiness on the part of the weaker to resist with fraud and chicanery, the untrustworthiness and corruption of subordinate agents, increase this friction.

Thirdly, the share may be taken upon an average of years, and the commuted money value may be calculated upon an average of prices. If the classification of the lands and crops be made sufficiently wide to embrace an accurate estimate of all reasonable differences, there ought to be no insurmountable difficulty in obtaining a fair average of all kinds of produce upon all soils. The ascertainment and record of prices are now part of the duty of every district officer: and there ought to be no valid reason why this duty should not be performed with sufficient accuracy for the local areas in every district. With these materials to hand, the task of settling rents or adjusting the enhancement of rents ought not to be an impossible one. No abstract theoretical rule will ever supply the want of such or some such actual materials.

Inadvisable to apply the principle immediately and generally, so as to alter existing relations.

In connection with the application of the principle, there are several considerations which require attention. *First*, shall it be applied immediately and generally, or shall it be reserved as a solution for particular cases, which cannot otherwise be solved? We are all agreed that it ought not to be worked adversely to the landlords so as to lower existing rents. I think we ought to accept existing rents as the basis upon which our enhancement provisions should work. That there are in these rents great inequalities is beyond dispute. Any attempt to do away with such inequalities and introduce a single standard into these provinces generally would, I am persuaded, be fraught with mischief. We must accept these inequalities as in the main due to imperfect machinery working unevenly—as the result of varying forces, which, as well in the moral as in the material world, leave the most uneven effects. The Irish "good" landlord who allowed his rents to stop at a point far below a rack-rent, and the Irish "bad" landlord who forced his tenants to pay nearly a rack-rent, were alike accepted as facts by the Legislature of 1870. The tenant-right of a farm on the estate of the former was worth much in consequence of his forbearance, while the tenant-right of a farm on the estate of the latter had become comparatively worthless because of his "oppression." Each has, however, under the Act of 1870, to pay compensation for disturbance upon the same principle. The "good" landlord has thus to pay a very much larger sum than the "bad" landlord to an evicted tenant. The manifest hardship of this result is a practical commentary upon the difficulty of framing a rule in such matters which will work no inequality when we come to put it into operation.

Existing relations may, however, be in some respects fairly considered in estimating the probable future effects of any proposed rule.

There are, however, some inequalities in existing rents, the causes of which ought not to be lost sight of in estimating the probable future effects of any rule proposed for adoption. Where one landlord has by force of character or force of another kind succeeded in obtaining a large share of that enhancement to which he equally with a less vigorous brother landlord may be held entitled, the new law ought not to give the same increase to both, though it should enable both to enhance up to the same point—it should raise them both to the same ultimate level, not raise by an equal distance men whom it finds at different levels and not equally in need of elevation. Then regard must be had to cases where a number of middlemen stand between the proprietors and the cultivators. The profits of these middlemen must come out of the pockets of the proprietors or of the cultivators. It will probably be found that the latter pay a large share of these profits, and that the rents of actual cultivators with many persons over them to get a share out of what they pay, are higher than the rents of cultivators who have to support one or two landlords only. We must be careful not to put a rule of law into the hands of the lowest middlemen which will enable them to make the position of the actual cultivators under them worse than the average position of their class elsewhere.[1]

What share of the produce shall be the measure of rent—will the same share be suitable for all districts, or for all parts of the same district.

If the principle of making a share of the produce the measure of rent be adopted, then arises the question—What share shall be the measure? Before this question can be answered it is necessary to ask and answer another question—Will it be proper to take the same share as the measure in all districts? This question must certainly be answered in the negative. It has been shown (page 247 of the Digest) that according to the evidence of district officers and Commissioners, the rents now paid the zemindars represent the value of shares of the gross produce varying in different parts of the country from *one-half* to *one-fortieth*. No doubt in those places where the smallest share reaches the zemindar, there are more persons standing between him and the cultivator to divide what the latter pays; but in the face of this inequality and in the absence of any evidence of some uniformity in the share paid by the ryots, it would be too hazardous an experiment to fix by law one rule and one measure in this matter for all the districts in these provinces. It will probably be admitted that it will be unsafe also, though in a less degree, to say that the same share shall be the measure for all parts of any one district.

Different shares necessary for different crops.

There are still further considerations which we cannot safely overlook: and, *first*, a difference must be made in the share for different crops. In the case of some special crops, as, for example, sugarcane, mulberries, tobacco, we are all agreed that a special rule is necessary. I apprehend that, in the case of many even of the staple crops, the share must be different from the share of the ordinary rice crop. By taking a share of the *gross* produce as the measure of rent, we get rid of an important difficulty, namely, that of calculating the cost of production in every case; but it will probably be found that this item cannot be altogether overlooked in fixing the share of the produce for some particular crops. The *kheraj* imposed by the Khuleef Omar was regulated by the degree of labour required to produce the crops. The settlement of Todar Mal took account of this point of difference. It has usually been considered by settlement officers in their proceedings: and the instructions to valuators and surveyors under the Irish Act already referred to do not overlook it. In these latter it is further pointed out that the cultivation of any given crop may be expensive or the contrary according to the suitability of the soil or locality. It must be borne in mind that if the share of any particular crop, which is to be the measure of the rent of the land upon which it is cultivated, be made so large as to leave the ryot less profit upon the cultivation of this crop than he can obtain from raising other produce, the result will be the discouragement and possible discontinuance of this species of cultivation.

Difference for soils.

Then, again, the nature of the soil is a very important point. Mr. Elpinstone mentions that from time immemorial the land of every village has been divided into a great many classes according to its qualities, as black mould, red mould, gravelly, sandy black mould mixed with stones, &c. The records of settlement officers are full of these distinctions. The *Instructions* under the Irish Act speak of *argillaceous* soils, divided into stiff clay, strong clay, loam, friable clayey loam, argillaceous alluvial, rich alluvial, and flat lands or holms; *siliceous* soils divided into sandy, gravelly, slaty and rocky; *calcareous* soils divided into limestone, gravel aud marly; and *peaty* soils divided into flat moory and boggy. From an examination of these different qualities a scale for arable lands has been compiled, containing twelve classes, valued at from thirty shillings down to one shilling an acre. Manu varied the share of the produce *according to the soil and the labour necessary to cultivate it*. In the *Ayeen Akbery* we have seen that the produce of a beegha of the best *poolej* land was taken at 18 maunds of wheat, while the produce of the worst was taken at 8 maunds 35 seers. So the produce in common rice varied from 17 maunds to 9 maunds 15 seers. According to Mr. McCulloch the produce raised from the lands under tillage in England and Wales in 1838 varied from 60 bushels for the best land down to 12 bushels for the worst land. Mr. Shore was of opinion that the "rates of the land, according to the nature of the soil and the produce, should be the rule for fixing the rent." It will be borne in mind that the expense of cultivating a beegha of inferior land is never less, and is in the majority of cases more than the expense of cultivating a beegha of the best land; and, this being so, there is a vast difference in making one-fourth of the produce a measure of rent in the case of 18 maunds and in the case of

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[1] This subject of middlemen requires to be treated with discrimination. Mr. Shore thought it to be for the interest of Government and the good of the country that the great zemindaries should be dismembered, and the number of petty proprietors increased, as this would lead to a more prudent, economical and equitable management. The zemindars of that day were notoriously incapable, and so long as the change consisted in splitting up large and unwieldy charges into manageable portions much good, doubtless, resulted where, as in the Patni system, the middleman obtained a permanent interest in the results of his management. The farming system, on the other hand, is bad, the sole object of the temporary farmer being to make as much profit as possible during his term, the after consequences being nothing to him. Where the sub-division by sub-letting the proprietary interest has gone far enough to secure effectual individual management, the creation of further grades of middlemen has a strong tendency to grind down the cultivators. Petty masters, over-familiar with every detail, are always tyrannical and oppressive.

8 maunds. Suppose the cost of production to be equal in both cases and to be equal to the value three maunds. In the one case the cultivator gets $18-(4\frac{1}{2}+3)=10\frac{1}{2}$ maunds; in the other case he receives $8-(2+3)=3$ maunds. In the first case the ryot might sub-let and make a profit of $7\frac{1}{2}$ maunds as compared with the second case. Rule 7 says, however, that if he sub-let he shall not take more than 40 per cent. or $6\frac{4}{5}$ maunds from his sub-ryot, that is, he may not keep for himself more than $6\frac{4}{5}-4\frac{1}{2}=2\frac{3}{10}$ maunds. If the operation of the rule of the share creates these inequalities, will the rule as to sub-letting work? Will any legislative enactment induce or compel a man to give a profit of $7\frac{1}{2}$ maunds for $2\frac{3}{10}$ maunds?

Other sources of difference.

Then there are other considerations by no means unimportant—the nature of the water-supply, the vicinity of villages and towns, the roads and other means of communication, the situation of the fields and the size of the holdings. There may be a short supply of water and the crops perish from drought. There may be too much and they are destroyed by inundation. The occurrence of these extremes is commoner in India than in many other countries. If the land is situate near a large town, there is a good and ready market available without any great expense for carriage. If the town be large and populous, there is a demand for straw thatching and other purposes, and a considerable sum is realised by the sale of that which in more remote places is left to rot upon the ground. The following remarks of Mr. McCulloch are applicable to the customary rents of India as much as to the competition rents of England: "Differences of proximity to market are a source of rent precisely analogous to differences of fertility. When corn, cattle, &c., raised on different lands sell in the same market and consequently at the same price, the land which is nearest to the market and pays least for carriage has the same sort of advantage over the others that it would have if it were more fertile. . . . The increased demand of towns occasioned by the increase of population not only tempts the cultivators in the vicinity to improve their lands more highly (take, for example, the environs of Calcutta), but frequently make large portions of their supplies to be brought from a great distance. Hence it sometimes happens that the advantage of vicinity more than counterbalances the disadvantage of comparative barrenness, and that lands of inferior fertility in the immediate environs of a large town yield a considerable rent, while much richer land at a distance from good markets yield little or perhaps no rent. As vicinity to a town is a cause of rent, so vicinity to a road, navigable river or canal, by diminishing the expense of carriage to some great market, may have a similar effect. It must be kept in mind that it is not the absolute fertility or position of any given lands, but their superiority in these respects as compared with other lands supplying the same market, that enables their cultivators to pay a superior rent." Most persons who have had experience in these provinces are aware of the wide difference in prices that prevails between two places situate at a comparatively short distance from each other, but between which there is no road or other easy means of communication. Then between fields in the same *mát* or plain there are many points of difference. As frequently is the case in Bengal and other countries where the land has been formed by great rivers carrying down alluvial deposit, the great *máts* or plains are lower in the centre than at the sides or edges. Thus there may be more humidity and better crops in the middle of the plain than at the sides. Again, the crops at the edges are exposed to damage by cattle or wild hogs, especially in places where there are no fences, while the fields in the centre are comparatively safe. The size of the holdings, too, is a matter of importance in a country where rents are not regulated by the competition of capital; where there are no manufactures to supply employment to those who cannot get a living from agriculture; and whence the inhabitants are unwilling to emigrate. If the share of the produce which is made the measure of rent be such that the average family occupying a holding of the average size cannot after paying it live in comfort, the result will be not, as in England, that capital will be withdrawn from agriculture and devoted to more profitable pursuits, but that the standard of comfort will be reduced and social progress retarded, if not thrown back. Cultivators who have large holdings can give a larger share of the produce as rent than those who have small holdings. "The average size of a farm in the United States," said *The Times* in a leading article on the 10th October last, "is lowest in Connecticut, where it is 93 acres. In Massachussetts, New York and Pensylvania it is slightly over 100 acres, and it increases gradually in the Western States. The average size of a farm in Ireland is 20 acres. It requires no profound knowledge of agriculture to be able to understand why the farmers of one country are in comparatively easy circumstances, with an abundance of food for their families, while the farmers of the other are always so near the brink of poverty and have children ill-fed and ill-clothed about them."

Many of the inequalities to which I have above alluded were remedied or obviated by the ancient custom of a periodical division of the land of the village. In later times when this custom fell into abeyance and the cultivators continued to hold their lands, the greatest pains were taken so to apportion the different classes of land amongst all the cultivators as to give equal advantages to all; or indeed this may have been in some respect the result of the old periodical partition. A ryot had a patch of high land that would grow to crops; a patch of low land that would produce the *aman dhan*, or rice crop, which grows in water and as fast as the water rises; a bit of mulberry land and a bit of sugarcane land; a strip for tobacco and a strip to grow the vegetables that he eats with his rice. Hence this interlacing of holdings which makes measurements so difficult, and hence the difficulty which the auction-purchaser experiences in finding out the exact land held by each particular ryot on his newly-purchased estate.

Conclusion that it would not be safe for the Legislature to fix any particular share of the produce as the measure of rent.

The conclusion to which I am myself led by the above considerations is that it would not be safe to fix by positive enactment any particular share of the gross produce as the measure of rent, either for all districts or for each district. As the point is one of great importance, I have thought it right to lay my reasons at some length before my colleagues. At the same time I am of opinion that the principle is one which we should not abondon altogether. I believe that it will be valuable as an aid to the Collector in fixing *The Table of Rates* for particular estates and local areas, only he must be left perfectly free to take into account any of the above points of difference, which are relevant, in applying it. He will thus be able to adapt the rule to the circumstances of each particular case, and the danger will be avoided of straining facts to meet a rule of impossible general application.

Question of sub-letting by occupancy ryots considered.

As to the policy of recognizing by a legislative declaration the right of every occupancy ryot to sub-let his land, I am afraid that grave doubts must be entertained by those who forecast the future by the experience of the past. My own opinion is that the right of occupancy ought to follow the land into whatever hands the actual occupation of it comes. I shall not overburden this paper by again quoting authorities to which I have elsewhere made allusion; but I may refer to the passages in which the question will be found examined and discussed. At pages 23 to 27 of the volume of *Systems of Land Tenures in various Countries*, published by the Cobden Club, the effect of sub-letting, "at once the cause and effect of Irish property," will be found discussed. Acts of Parliament were passed to prevent or discourage it: and the improved condition of the agricultural class, which has resulted from its cessation is beyond doubt. Speaking with reference to Mr. Parnell's scheme for converting Irish farmers into proprietors, *The Times* said, a few months back: "The great, the invincible, objection to Mr. Parnell's proposal, supposing it were otherwise feasible, is not merely that it would stereotype the miserable conditions of farming life in Ireland, but would tend to remove the poor checks that now do in some measure prevent those conditions from becoming worse. Let us suppose the tenants of Ireland transformed into proprietors. There are now more than 120,000 holdings in the country not exceeding 5 acres each, and we may hope these would not be sub-divided; but there are 167,000 holdings between 5 and 15 acres, and 137,000 more between 15 and 30; so that out of a total of 585,000 holdings in the country 424,000 are less than 30 acres each, and who cannot see the danger that these 300,000 holdings of from 5 to 30 acres each would become in another generation 600,000 with an average brought down to the *minimum?* A vigilant landlord may use his power to prevent sub-division, although with the certainty of being hated and the risk of being shot in consequence; but if tenants could be made proprietors, subject to certain mortgages or rent-charges to the State, no machinery the State could establish would be efficient to hinder sub-division, and consequent degradation of the well-being of the people."

Sub-letting as practised in these provinces is a form of effecting sub-division. If we are not prepared to put a check upon this mischief as caused by the operation of the native laws of inheritance, let us not afford additional facilities for creating it by encouraging sub-letting. With respect to sub-letting and the double ownership created thereby, it has been epigrammatically said that the effect is that the landlord is divorced from the soil without the tenant being married to it, and the evils of an illicit union are the natural result. M. de Laveleye in his chapter on those hereditary leases which are known in Holland under the name of *beklem-regt,* in Italy as the *contratto di levello,* and in Portugal as the *aforamento*—"a species of tenure creative of a class of cultivators enjoying all the advantages of ownership, except that they do not retain for themselves the net profit which is precisely what would have alienated them from cultivation," and the *exemplar* of what the right of occupancy might well be made—points out how sub-letting tends to subvert the benefits of this tenure.

If any of my colleagues are not prepared to accept section 21 of the existing draft in its full extent, I suggest, by way of compromise, that the principle of this section be applied to holdings of a certain size—to holdings of the size or less than the size sufficient to maintain an average family in comfort, occupancy ryots who have larger holdings being permitted to sub-let the excess only in all cases.

Increase of prices, the most important ground of enhancement and the most general in its operation.

Turning again to the question of enhancement, and having advertence to the four grounds stated in section 22 of the draft, it will probably be admitted that the fourth ground, *viz.*, that based on the increase of prices, is the most important and the most general in its operation. If this ground could be successfully dealt with, the other three grounds—certainly the first and second—would present little difficulty. If rent instead of being made payable in money, in silver, had been made payable in corn, in produce, it is evident that the landlord would receive the full benefit of any rise in the price of produce. Let us suppose a ryot's rent to have been Rs. 20 in 1870, and the price of paddy to have then been one rupee per maund.

The money rent was then equivalent to twenty maunds of paddy. The price of paddy has steadily increased during the last 10 years. Let us take it to be one rupee eight annas in the present year (1880). Now if the rent, instead of being twenty rupees in 1870, had been fixed at twenty maunds of paddy, this would now be equivalent to a rent of *thirty* rupees. A rent measured, made payable in a fixed quanity of produce, is different from a rent measured by a fixed share of the gross produce, and could be worked without causing much friction or irritation between the parties standing in the mutual relation of landlord and tenant. Probably no ryot would have objected in 1870 to pay twenty maunds of paddy instead of twenty rupees, and all ryots would gladly have settled the landlord's claim to enhancement by agreeing to such an arrangement, even with the prospect of rising prices. Now, if we knew for certain in any case—

(1) the rent paid by a ryot, and
(2) the actual price of rice and other staple crops at harvest-time and in his locality for the last twenty years,

I think none of us would have any difficulty in saying what would be the fair increase of money rent which the landlord ought now to receive. The landlord should, in the absence of other disturbing circumstances, receive a money rent, which, upon a fair average of years at the present time, represents the same amount of produce which the former rent represented upon a fair average of years at the time when it was fixed or at some later time. I think this would be a much more workable rule than that which was the result of the Great Rent Case. I place the two rules in juxta-position for the sake of easy comparison:

Proposed rule of enhancement on the ground of increase of price.

Rule propounded in Thakurani Dasi's case.

Former total price of gross produce : Increased total price of gross produce :: Former rent : Increased rent.

Proposed Rule.

Former market price of staple crop : Increased market price of staple crop :: Former rent : Increased rent.

It will not be forgotten that the rule propounded in *Thakurani Dasi's* case applies only to cases of enhancement on the ground of increase of the value or price of produce—*see* Digest, page 41. In order to work this rule, we have to ascertain by evidence (1) the former produce of the land consisting, it may be, of many and different crops; (2) the former market prices of these crops, from which the total value of the produce is to be calculated; (3) the present produce consisting of several crops; and (4) the present prices of these crops, from which to calculate the present total value of the produce. I need scarcely remind the other members of the Commission that in consequence of the difficulty or impossibility of obtaining these *data* reliably, the rule has become a dead letter. In order to work the proposed rule, we want merely (1) former market price of a few staple crops, and (2) present market price of the same staples, and we are relieved of two of the *data* most difficult to be determined upon evidence. As to the two items required, one, *i. e.*, the present market price, can easily be proved. The former market price can be proved, but less easily. To make this as easy of proof as the former, I return to my former proposal as to the preparation and publication by district officers of price lists for local areas. These price lists should be made *primâ facie* evidence of the truth of their contents, I would follow *The Tithe Commutation Acts* in taking no account of special crops, and would thus acknowledge a principle of political economy to which I have above alluded and which has been already acted upon in this country.

In laying this proposed rule before my colleagues, I feel too much the great difficulty of the whole subject to indulge in any sanguine expectation that it will prove to be a satisfactory solution of the fourth ground of enhancement; nor would I recommend that this ground be left to be solved by the proposed rule alone. I would place the rule at the disposal of the tribunals as one possible means of settling, or as an aid to assist them in settling, enhanced rents.

The present draft of enhancement provisions contains, in my opinion, all the provisions of substantive law which it is safe to lay down by way of positive enactment. Section 116 gives the Board of Revenue full discretion and authority to prescribe rules for the guidance of the Collector in making *The Table of Rates*. In the first outline of enhancement propositions which I prepared, I suggested a provision of this nature:

"The Collector, in order to make *The Table of Rates*, may have regard to such matters as appear to be relevant, as, for example, to the following:—

1—Under how many heads the land should be classified:
2—What different rates of rent should be assigned to these classes:
3—The time at which rates of rent were last settled:
4—The prices of produce at that time:
5—The probable permanent increase of prices:
6—The substitution of more profitable crops:
7—Whether there are improved facilities of market:
8—Whether there are improved facilities of communication:
9—Changes in cost of production:
10.—Rates paid by under-ryots and tenants-at-will."

After discussion it was thought better not to insert in the Bill any provision of this kind, but to leave the Board of Revenue the fullest discretion to make rules. I accepted this view, feeling that in setting sail over unknown seas without the pilot Experience, it might not be safe to lay down too exact a course for the ship, lest this might lead her to sunken rocks or dangerous quicksands. All proceedings in making Tables of Rates will come before the Board: facts and information will be rapidly accumulated: the field of operation will be regarded by different minds from different standpoints of view: and when the waters have been crossed and re-crossed and their depths sounded, and their currents tested, the materials for a more accurate chart will be to hand, and more definite sailing orders may then be given for future guidance. Some of the Native members of the Commission were of opinion that definite rules should be laid down for the guidance of the Collectors; but they rested satisfied with this expression of opinion, and did not go on to propose any definite rules which, in their opinion, could be laid down with safety. Mr. Mackenzie has brought us what he has been able to discover after diligent search and careful consideration. The conclusions to which I am led are set forth in this paper, and are briefly these, namely, that we ought not to attempt anything further by way of positive enactment in the shape of substantive law than what the draft contains as it now stands, but that the rule of *a share of the gross produce*, and the rule of *proportion above proposed*, might well find a place in the Bill rather in the form of suggestion than of binding instruction.

C. D. Field.

The 13th April 1880.

Note by Babu Peary Mohun Mookerjee, *dated 20th April 1880, regarding Enhancement and Sub-letting.*

It may no doubt be plausibly argued that it would promote the interests of agriculture and prevent the evils of sub-infeudation if every cultivator of the soil were restricted to the possession of enough land, and only just enough, which might give employment to the members of his family and maintain him in ease and comfort. But the argument is at best specious. The desire of every ryot to increase the area of his holding is natural and praiseworthy. Every person who tries to improve his position and means in the sphere of life in which he has been bred, and to make some provision in anticipation of the division of his property among his sons after his death, is entitled to all sympathy at the hands of the legislator. After a ryot has therefore acquired more land than he can cultivate, why should there be a restriction to his sub-letting it in the best way he can till his sons grow up to manhood, or he makes a division of his land among them? The law of supply and demand has always governed such cases, and not a single case was ever heard of in which a korfa ryot was coerced into what he considered a disadvantageous arrangement.

A proposition to convert into middlemen all ryots who have acquired lands above a certain area, and who have sub-let the whole or a portion of them, would be equally mischievous. It would infringe the rights of the zemindar, who alone has the right to create a middleman between himself and the cultivator, and bring into existence a class of men who are allowed to be no very useful members of an agricultural community. It would, moreover, give rise to great confusion in the determination of the relative rights of the different classes.

Rules regarding sub-letting will, therefore, either confiscate rights which are the outcome of good management and investment of capital by the ryot, or invade a well-recognized right of the zemindar, and produce inextricable confusion without giving in return any adequate good. Mr. Harrison has well shown that any limitation in the rate of rent of the korfa ryot would be virtually a dead-letter, and that nothing will prevent a ryot from exacting from his korfa the highest rent obtainable. Such rules, therefore, will not even have the effect of benefiting the actual cultivator. But even supposing that the proposed limitation could be practically enforced, what will prevent the korfa ryots who will then have substantial rights in the land from sub-letting in their turn their lands to others? No law will protect the actual cultivator from the liability to pay the highest rent obtainable in the locality.

A sale of the ryots' holding cancels all sub-leases created by him. There is therefore little danger of the system of sub-letting producing a permanent sub-infeudation of land to the injury of the zemindar or of the community. The proposed law for making all occupancy rights transferable will reduce that danger, if any, to a minimum.

A justification of the proposed rules can only be founded on the position of those who have built houses and cultivated land for 20 years or more under sub-leases created by large occupancy ryots who in all respects but in the origin of their holding may be regarded as middlemen. Theirs is, however, an exceptional position which they have voluntarily accepted. The number of such cases is small, and most of such sub-ryots have protected themselves by taking proper leases from the ryot. In many cases, moreover, notwithstanding the contention of the zemindar to the contrary, these occupancy ryots have been, and will be, regarded by the courts as middlemen. They should not, therefore, be allowed to create a disturbance in the general system which has hitherto given cause to no complaint.

Every consideration therefore shows the expediency of ignoring the system of sub-letting by ryots in the proposed rent law. We can do no better than follow the wise policy of the framers of Act X of 1859, and satisfy ourselves by simply adopting the negative provision relating to sub-ryots contained in section 6 of that Act.

On the above considerations I beg to suggest the omission of sections 1 to 5.

The proposed sections relating to enhancement of rent are still more objectionable.

The authorities quoted by Mr. Harrison and Mr. O'Kinealy in their notes prove beyond all doubt that under the Regulations of 1793 no class of ryots except those who held istimrari tenures from the time of the permanent settlement were entitled to hold at privileged rates, and that the rate of rent which all ryots were liable to pay was the customary or pergunnah rate which was the highest rate obtainable. This was the view taken by the framers of Act X of 1859, and Mr. Harrison rightly observes that "we as a Commission ought not to go behind that Act in an important question of principle of this kind." The right of occupancy created by that Act was not intended to ignore the rights of landholders in this respect. Mr. Mackenzie truly remarks, in paragraph 7 of his note, dated the 6th of January last: "I hold that it should only protect the ryot against arbitrary ejectment, and does not entitle him to hold at any privileged rate of rent."

It is clear therefore that, so far as existing rights are concerned, the proposed sections would be a direct infringement of the rights of landholders. Such an infringement is not warranted by the regulations and laws, and if it is at all to be made, it must be made after landholders have been adequately compensated for the loss. Is it necessary for the good of the country? I have tried to show above that no amount of legislation will protect the actual cultivator from the liability to pay the highest rent obtainable to his superior holder. The effect of these sections will therefore be simply to take away from the landholders a good portion of the profits which they are legally entitled to get, and *to give them to a body of men who will rapidly convert themselves into middlemen,* and who will naturally be more exacting than large proprietors in their terms with the actual cultivators. The cultivators of the soil will not be benefited, while an unwarrantable act of spoliation of vested rights affecting a large class of men will be perpetrated.

The landholder's right to get rent at the pergunnah rate should be therefore left untouched. It gives him a share of the produce which local custom has declared to be his proper share, and it at the same time leaves the ryot a margin of profit in excess of the costs of cultivation.

The determination of the customary rates of rent in different localities is a matter of no great difficulty. But by reason of no enhancement of rent having been allowed by the courts within the last 10 or 15 years, the result will be somewhat unfair to the landholders. Even if no allowance be made for that circumstance, the landholders will be satisfied if customary rates are determined in the way in which it was always determined, namely, by ascertaining the highest rent at present paid for different classes of land in different localities, and if enhancement of rent be allowed on the basis of such rates, I am aware that this method of adjustment of rent will deprive the landholders of a portion of the increased value of produce which he is properly entitled to claim, but after the rates for different areas have been once authoritatively determined, the procedure in enhancement suits will be so simple, and settlements of rent will so mathematically distribute the increased value of produce in the ratio in which it is at present distributed that I think landholders will not grudge the loss it will entail on them.

It remains for me to make only two more observations.

The idea of progressive enhancement is new and altogether foreign to the subject. When a waste land has to be cultivated, one can understand a ryot wishing to rent it at a progressive jumma in consideration of the time which must elapse before the land will yield a full crop; but why should a ryot be entitled to pay even for two or three years anything less than what the court holds to be the fair and equitable rate? It would be taking an altogether wrong view of the rights of the parties if we think that the burden of enhanced rent should be lightly and gradually thrown on the ryot. A consumer of food-grain has much better right to claim a progressive instead of a sudden rise of the price of grain. In the case of the ryot it must be assumed that there has been a steady rise of the value of produce, and that he has refused to pay amicably to the landholder the share of the increased value which he is entitled to get. Tenderness to the ryot under such circumstances will be wholly misplaced. It will simply give a premium to litigation, and stop for ever all amicable adjustments of rent.

The proposition to make payments in kind commutable into money rent at the instance of the ryot is based on a misconception of the nature of *khamar* lands. It is mostly those lands which are more than ordinarily susceptible to damage by accidents of season that are let as *khamar* lands. The contract is renewed from year to year. The ryots have no sort of right whatever regarding them. They will decline in many cases to engage to pay a fixed rent for such land. Why should the law step in and impose restrictions on engagements which the parties voluntarily enter into?

Holding these views, I beg leave to suggest the adoption of the following draft sections in place of those proposed in Dr. Field's note:—

1.—That within a year after the passing of this Act the ratio which the highest rent paid *bonâ fide* for different classes of land within each district or other local area bears to the value of the produce of such classes of land be determined by such ways and means as to the Lieutenant-Governor shall seem proper.

2.—That the ratio so determined shall be deemed to be the fair and equitable rate of rent payable by occupancy ryots.

3.—That the rents of all occupancy ryots who hold at a rate of rent less than what is so determined to be the fair and equitable rate shall be liable to enhancement at that rate.

4.—All occupancy ryots shall be liable to pay rent at the fair and equitable rate so determined, provided that a ryot may show that by reason of his having invested money in the improvement of his land, or of any other equitable ground, he is entitled to hold at a lower rent.

5.—That the enhanced rent shall not be more than double the former rent.

6.—That when rents have been once enhanced there shall be no further enhancement, except on the ground of alluvion, for ten years.

The 20th April 1880. PEARY MOHUN MOOKERJEE.

Note by MR. DAMPIER *regarding the position of Tenure-holders and Ryots, dated 11th May 1880.*

I HAVE now considered the different lines which have been suggested for the chapters of the Bill which shall define the position of the occupancy ryot, the protection to be afforded to him, and the incidents to be attached to his tenure, and I submit, for the final adoption of the Committee, the accompanying proposals for sections on these points.

2. Mr. Field has given his concurrence to the scheme after verbal discussion, and has been good enough to hew my suggestions into some shape.

3. Judging from the constant doubts and disputes which now arise on the question, I have thought it desirable to draw an arbitrary distinction between a "tenure-holder" and an "occupancy ryot," based on the extent of the tenure and on the consideration whether it was already occupied by ryots or not, when the tenant in question was first let on to it by the landlord.

4. I have taken 50* standard beeghas as the maximum area which shall be considered to constitute its holder a "ryot;" and even if the area is less than 50 beeghas, the tenant will not be a "ryot" but a tenure-holder, if more than half of it was occupied by ryots when he was let into it by the landlord.

5. The course which first suggested itself for cases in which a tenure when created was partly covered with ryots and partly vacant was to make the tenant a "tenure-holder" in respect of the occupied part, and a "ryot" in respect of the part originally unoccupied. This would have made the different parts of the tenure subject to different incidents as to enhancement, &c. At Mr. Field's suggestion I have preferred to provide that the tenant shall be tenure-holder over the whole area, and that the area which he has himself cultivated shall be deemed to be his *khamar* land, protected like all such land in the existing law against the growth of rights of occupancy in under-ryots whom the tenant may let on to it.

6. The effect of these definitions will be to lift into the position of tenure-holders many who according to the current of decisions under the existing law are now classed as "ryots with a right of occupancy." These decisions have laid down that the area comprised in the holding on to which a tenant was let does not necessarily affect the question of his position as "occupancy ryot" or otherwise.

The consequence of passing these tenants over the line and making them tenure-holders will be to extend the protection against eviction and enhancement, which the law gives to occupancy ryots, and the right of acquiring such protection to those who have hitherto been direct under-tenants of the tenants who are now so passed over the line. Formerly these latter were the occupancy ryots, and their under-tenants unprotected *korfas*, and in fact this privilege of being considered the lowest protected tenant, under the name of "occupancy ryot," is one which is much coveted and which is held to with much tenacity.

We must distinctly understand, therefore, that in thus lifting certain occupancy ryots over the line into the class of tenure-holders, we are not conferring a boon upon them, but upon the immediate holders below them, who will now acquire the privileges of protected occupancy ryots from which they were before excluded, the position being already occupied by the superior holders.

I would do this deliberately. The holder on whom I now propose to confer the privilege of being occupancy ryot, if not always the actual cultivator to whom we should like to attach that privilege, if we could, is at least nearer the position of actual cultivator than the reclaiming capitalist above him.

7. (1.) But then this reclaiming capitalist who has hitherto been classed and privileged as an occupancy ryot, if converted into a tenure-holder, is surely entitled to a more favourable position than the ordinary tenure-holder, who was originally let in by the landlord, not as a reclaimer of land, but as a middleman between himself and the ryots already on the land. We agreed in the case of this latter class, the ordinary tenure-holder, to revert to the provisions of Regulation V of 1812, and to lay down that his rent should be so fixed as to leave him a profit of not more than 10 per cent. on the gross rental paid to him by his tenants (after deducting from these the cost of collection). After much consideration it has appeared to Mr. Field and myself that this 10 per cent. is too low as a maximum.

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* Suggestions are invited as to the exact limit which it would be best to impose.

2. The effect of the above mode of calculation and the above maximum in an estate on which the pressure of the Government revenue is 70 per cent., on the gross ryotti rental, the costs of collection 10 per cent., would be to leave a profit of Rs. 9 to the tenure-holder, and Rs. 11 to his landlord out of every Rs. 100 of gross rental. In such estates, that is, the more recently settled estates, the tenure-holder's proportionate share would be quite enough.

But in the old permanently-settled estates the pressure of the revenue instead of being 70 per cent. on the gross rental may be anything less, down to 10 per cent. With the maximum fixed as above, the whole difference would go to the landlord, who might therefore enjoy a net profit of as much as Rs. 71, against the tenure-holder's Rs. 9 out of every hundred. This would evidently be inequitable.

(3.) We then considered whether it would not be possible to devise another means of calculation by which the law should lay down the proportion in which the profits should be divided after deducting from the gross rental a sum proportionate to the pressure of the Government revenue.

This course is prescribed in the Bengal Settlement Act of 1879, and it is possible in the course of proceedings for the adjustment of the revenue demand, for in such proceedings *ex hypothesi* the future pressure of the revenue on the gross rental of the land is known.

But in settling the land of an individual tenure out of a large estate the case is different, and the pressure of the land revenue could often not be ascertained without involving an enquiry which should embrace the gross assets of the whole estate, perhaps a vast area.

(4.) For these reasons we have reluctantly abandoned any attempt to give a precise definition of the amount of profit which the ordinary tenure-holders shall be entitled to retain, or of the proportion of the gross rental received by him which he shall be required to pay as rent to his landlord.

(5.) But, for the reasons given above, we have no doubt that 10 per cent. of the gross rental, the maximum fixed by Regulation V of 1812, is too low, and we would raise the maximum at least 30 per cent. of the gross profits after deducting the costs of collection. This will probably not be acceptable to the zemindar class.

8. Then, as mentioned above, it seems desirable to draw a distinction between the reclaiming tenure-holders (the *jangalburi talukdars*) and the ordinary middlemen of whom I have just been writing, especially as many of the former will now be lifted out of what was the more coveted position of "occupancy ryots." I have therefore provided that those who can prove such rights shall be deemed to be a distinct class more highly privileged than the ordinary tenure-holder.

9. (1.) In the cases of the *jangalburi talukdars* again we have been met with the same difficulties in the way of assigning any definite limits to their rents and consequently to their profits. It will not, however, be disputed that they are entitled to larger proportion of the profits than the ordinary middlemen tenure-holders.

(2.) The distinction I have proposed to make between the two classes is to impose a *maximum* of 30 per cent. on the profits left to the ordinary tenure-holders; but in the case of the *jangalburi talukdars* to fix a *minimum* of 20 per cent. and no *maximum*. It seems impossible to impose a higher maximum than 20 per cent., for in an estate which has been recently settled, and on which the assessment of land revenue has been made since the land was reclaimed, the pressure of the land revenue will be 70 per cent. of the gross rental, the cost of collection (say) 5 per cent., and the amount for division between the tenure-holder and his landlord only 25 per cent.

10. To pass to the occupancy ryot. I clung as long as possible to the attractive idea of following the traditional policy of making some proportion of the value of the gross produce of his land the measure of his rent; but the discussions of Sir Richard Temple's time, as well as the inherent imperfections of such a measure, have driven me, after full consideration, to abandon it. It is obvious that the proportion of the value of gross produce which might be a light rent for highly productive land might at the same time be an impossible rent for poorer land to pay. I have, however, with some hesitation accepted the idea of my colleagues to impose 25 per cent. of the value of the gross produce as the maximum above which no ryot's rent shall be enhanced.

11. Then, as to whether the right of the occupany ryot to sub-let shall in any way be restricted. After considering all that has been urged in the present discussions and much more, I have arrived at the conclusion that, as things now are, any attempt to restrict this right, either by absolutely prohibiting it, or by putting any restriction on the rent for which the occupancy ryot may sub-let, will be futile. If a ryot wishes to sub-let and can get a profit of 100 per cent. on the rent which he has to pay, the existence of a law against his so doing will lead only to evasive arrangements between the ryot and his sub-lessee, the *korfa*. Any provisions to the effect that such rent cannot be recovered by legal process will be met by such devices as payment of the rent beforehand, or by an increase of the *korfa's* rent to cover the risk of loss and other incidents of illegality.

12. (1.) Nor do I feel by any means certain that, under the present circumstances of the country, we should be justified in putting a stop to the system of sub-letting to *korfa* ryots, even if we could do so effectually. It is very well to say that the *korfas* will be the impoverished cottiers of the future. That of course will be an undesirable result. We had much rather see them thriving artizans, hopeful emigrants, or even well-fed and well-clothed labourers.

(2.) But are these alternatives really before them?

Can we point to the industries which are open to them as artizans?

Are we sanguine enough to believe that they will (as a class) emigrate rather than starve in their villages?

Or do we really tkink that as things stand in this country they will be better off as hired labourers than as "korfa cottiers"?

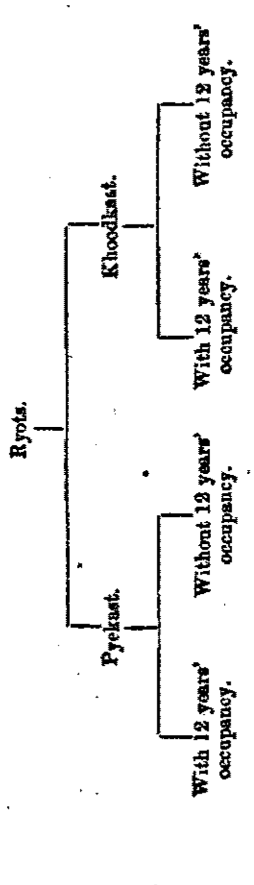
(3.) For myself I should reply in the negative to each of these questions. How, then, should we, under existing circumstances, benefit this class by excluding them from *korfa* cottierism? We have nothing to offer them instead of emigration, and that they will not accept. It may be said "if they will not accept it, they must take the consequences of their own obstinacy." This I am not prepared to say.

(4.) Very probably, if we could effectually put a stop to the practice of sub-letting to *korfas*, we might thereby bring about the desirable end of diminishing the pressure of population on the soil; but I fear that the object would be gained in a much more immediate and summary manner than by a gradual decrease in the number of births.

The 11th May 1880. H. L. DAMPIER.

Note by BABOO BROJENDRO COOMAR SEAL *on the status of ryots, dated 28th May 1880.*

I WILL take this opportunity of shortly stating my views about the ryots generally.


Ryots.
Khoodkast.
Without 12 years' occupancy.
With 12 years' occupancy.
Pyekast.
Without 12 years' occupancy.
With 12 years' occupancy.

I agree with Messrs. Field, O'Kinealy and Mackenzie that "on a correct construction of the Regulations and Acts no landlord was legally entitled to raise the rents of any village ryots above the pergunnah or customary nirikh or rate (*vide* Dr. Field's note of the 13th January 1880.)

Before Act X of 1859 ryots were divided into two classes, and the fundamental division was residence. Act X of 1859 made the division by reference to the period of occupation. It thus gave to the pyekast ryots with 12 years' occupancy the same privileges which khoodkast ryots generally possessed, and deprived the khudkast ryots without twelve years' occupancy of their rights, and they were placed in the same position as the pyekast ryots without occupancy were.

So far as pyekast ryots with twelve years' occupancy are concerned, it would be too hard to deprive them of the rights which they have enjoyed for the last twenty-one years; but I would restore to the khoodkast ryots without twelve years' occupancy the rights which they previously enjoyed, *viz.*, protection against arbitrary ejectment.

The remarkably lucid exposition of the law contained in Mr. O'Kinealy's notes establishes at least this proposition, that it is *fairly arguable* that under the Regulations a ryot, whether he be a pyekast or a khoodkast ryot, was not subject to arbitrary ejectment.

Section 7 of Regulation I of 1793 directs the landlords to treat the ryots with moderation, and then comes section 8, which in effect threatens them with legislation if they were not to treat them with moderation.

It is certainly no moderation to eject a ryot who is willing to pay such amount, far less a ryot who intends to dwell permanently in the village.

Regard being had to the provisions of section 8 of Regulation I of 1793, there can be no doubt that the Legislature has the undoubted right of making rules for the protection and welfare of the ryots. What protection does the law give if the ryots and their families may be banished from the village at the will of the landlord?

Protection against arbitrary ejectment will have the tendency to improve the administration of the criminal law. Every police officer knows how difficult it is to make the ryots speak the truth in cases in which their landlords or other relatives or other servants are concerned.

Without recommending any change in the status of the pyekast ryots without occupancy for 12 years, I would give protection to a khoodkast ryot, although he has not lived in the village for 12 years.

In the language of Mr. Justice Norman, I would take those to be khoodkast ryots who have given unequivocal proof that they intended to remain at the place of their settlement, and who have been recognised as fixed residents of the locality, although their holding may have been of recent date.

If it were necessary, I would define khoodkast ryot to be one living in the village with intention to live there permanently, and cultivating lands (situate at a distance of three miles from his house) belonging to the person of whom he holds his homestead.

If intention of the murderer can be determined, there can be no difficulty in knowing the intention of the ryot.

The 28th May 1880. BROJENDRO COOMAR SEAL.

Note by Mr. Mackenzie *on enhancement and sub-letting, dated 31st May 1880.*

I had intended at one time to record on the proceedings of the Commission a detailed reply to Mr. Harrison's "Note on sub-letting the occupancy right," but I have hitherto never been able to find time for this; and now, on reading the papers again, it seems to be hardly worth while to attempt it. I have a high opinion of Mr. Harrison's acuteness. As a destructive critic he has few equals in India. But in this instance I must say that he has, it appears to me, approached his subject without any adequate study of the great mass of information bearing upon it, and his argument has only confirmed me in my own conclusions. Those conclusions may be wrong; but they were come to after long and careful examination of every scrap of evidence on which I could lay hands. I had no prejudices to begin with, so far as I know; but a perfectly independent enquiry has led me to the same result, in the main, as that come to by Mr. O'Kinealy. I am quite content to err, if I do err, in such good company.

2. Mr. Harrison appears to me to start on his enquiry with a cargo of *à prior* speculations and theoretical notions of what Indian rent should be, or might have been under different conditions to those which really existed. Mr. O'Kinealy, in his elaborate and very able note, shows this conclusively; and had Mr. Harrison studied the Parliamentary Reports, and such books as Biggs' Land Tax, or "A Civilian's Memoir on Land Tenures in Bengal," or even the old Bengal Regulations themselves, he could not, I venture to think, have adopted so positively the view he now advocates. He seems to me to overlook altogether the history of money rents in Bengal. He postulates, as in force in 1793, a system of re-adjusting ryotti payments in accordance with varying prices of produce, which had no existence whatever in fact. He fails to see that, under the system of distributing the Government assessment from above downwards, and in the general absence before 1793 of any body like our English landlords, there was in fact no such thing as "rent" in the English sense—so far at least as the hereditary ryots were concerned. He does not apparently know that even of common ryots the position at that time could be thus described: "Common ryots are not to be considered, under the practice of the country, as tenants at sufferance and liable to be ousted from year to year by a malguzar, because another offers a higher rate. The acts of tillage and occupancy convey, by ancient law and custom, a right to hold their fields, provided always they cultivate the crops which their land ought in reason to produce, *and pay the fixed quota of land tax which is leviable from them*, according to the rank they occupy in the agricultural community, on each description of produce."* As Mr. O'Kinealy has shown, there was no legal or customary ground for a malguzar's raising *any* ryot's *quota* of land tax unless the State demand upon the whole agricultural community was raised. Under these circumstances, to grope for a standard of ryotti *rent*, as now understood, in the arrangements before 1793, is to land one's self in a maze of false assumptions and erroneous theories.

3. I must, to prevent misconception, repeat here what I have constantly explained to the Commission, that I do not in any way advocate the confiscation of valuable zemindari rights as now existing. The zemindars have established (by right or wrong-doing matters nothing) the practice of enhancement. I do not propose to disallow this now. But I have tried to show the strength of the ryot's constitutional position to support my contention that we are bound to maintain him in the occupation of his fields so long as he pays those prevailing rates of rent (current, that is, in his village) which *the revenue officers of Government* declare to be fair and equitable. I deny the legal existence in the old agricultural economy of Bengal of anything like competition rents. I maintain that the cultivator is entitled to *profit* as well as to maintenance; and I hold that our only true safeguard against the effects of famine is to make the cultivators a substantial and comfortable class by giving them by law what may perhaps be termed a valuable "tenant right." I justify this by the argument that they *have* in fact constitutionally rights of this kind.

4. On the general question of sub-letting, the Commission are aware that I only put forward the propositions recorded at their 22nd and 25th meetings, in order to bring to a point a very desultory discussion. I felt, and still feel, all the difficulties of the subject, and am by no means confident that any good solution has yet been arrived at. (As is well known, I suggested the very solution which Mr. Harrison is willing to adopt in the Bill I brought forward last year.) My chief object at present is to have every possible suggestion thoroughly examined and jealously criticised.

5. Apart from all the merits of the question, it is obvious that Mr. Harrison on the one side, and Mr. O'Kinealy and I on the other, approach it from perfectly different starting-points. Mr. Harrison thinks apparently that he can change by legislation the whole face of rural Bengal and revolutionise by statute all its agricultural arrangements where these do not happen to quadrate with the theories which he is disposed to favour. Mr. O'Kinealy and I, on the other hand, feel that we can do very little by positive law to change the stereotyped customs of sixty millions of ignorant people. We prefer, therefore, if possible, to meet the admitted evils of excessive sub-letting by discouraging rather than by disallowing it. We think it out of the question to abolish "middlemen" by legislation, believing it better to protect the ryot against arbitrary ejectment, and, as far as possible, against excessive demand of rent, and then to leave parties to a natural adjustment. We would introduce into the law, if possible, principles which would make sub-letting disadvantageous *in itself*, and make it the direct interest of the occupancy ryot to cultivate his land himself. (If the korfa ryot's rent is such as to

* A Memoir on the Land Tenure, &c., obtaining in the Bengal Presidency, by a Civilian. 1832.

leave him a profit, as well as maintenance, it is obviously for the occupancy ryot's interest to cultivate on his own account.) At the same time we decline to convert summarily all the korfa ryots of the province into occupancy tenants, which is what Mr. Harrison at first wanted to do, feeling that the effect would be disastrous upon the rates of rent now paid by the true occupancy ryots, and that it would be most distasteful to the whole agricultural community. I am sure that the idea of having a maximum limit of rent, legally recoverable, was more practical and equitable than this scheme of Mr. Harrison's.

6. I have said I would not now take up his note in detail; but I may observe, in passing that his first eight paragraphs show that he failed in some degree to grasp the actual proposals he professes to discuss. A ryot holding at permanently fixed rates is really a *tenure-holder*, and his sub-tenant may be an occupancy ryot himself, and not a korfa. (Hence the ryot at permanent rates was ignored in my draft propositions.) All the argument based on the country theory therefore falls to the ground. Then, again, the inducement to existing korfas to continue paying present rates was that they would then, and only then, get a sub-occupancy right. It was believed that this would be a sufficient inducement to prevent their throwing up the lands to sit nominally at a lower rent, but entirely at the mercy of their lessor. To prevent *further* sub-letting by ryots who now till, or by korfas themselves, we proposed a maximum limit of rent. This might of course be evaded, but it would in all probability gradually make its way and become recognised. In paragraphs 9 to 15, again Mr. Harrison endeavours to show that sub-letting was an idea both legally and logically foreign to the right of occupancy. To this a crushing reply is given by Mr. O'Kinealy (pages 58 and 59 of his note). I will only add (if I may adopt once in a way the kind of argument rather frequently used by Mr. Harrison) that sub-letting *must* have existed in India from the earliest times, because large classes of the most important cultivators did not themselves actually cultivate. According to Manu, "a Brahman and Kheftriya were to avoid the business of tillage, and to cultivate through men of lower castes, allowing to them a share of the produce." Moreover, wherever village communities existed, there also, we know, sub-letting was to be found. It was the best way of reclaiming land, and the India of to-day owes much to the custom. It has *now*, owing to the pressure of population, become an evil leading to the growth of a pauperised cottier class, and we should, if we possibly can, discourage it, but we cannot abolish it all at once.

7. Leaving, then, Mr. Harrison's note of the 6th March 1880 to be read with Mr. O'Kinealy's elaborate examination of the true relation of landlord and tenant in Bengal before our legislation and our case-law (assisted by the culpable neglect of our Government) upset it, I pass on to notice very briefly Mr. Harrison's earlier note of the 23rd January. In this he misapprehends and mis-states my view as to the value of the occupancy right, which I proposed to recognise as belonging to *all* resident ryots or settled cultivators. I did not suggest that the occupancy ryot should be protected from ejectment so long as he paid *any rate of rent the landlord chose to demand*, as is assumed by Mr. Harrison's argument, but that he should be protected so long as he paid the established village or pergunnah rate as ascertained and laid down for *all* under the procedure at that time contemplated by the Commission. *That* being postulated, I said there was no necessity to recognise any *specially* privileged holders among occupancy and ordinary ryots. In fact, as the established rate would in practice be the rate applicable to all classes, the occupancy right, *under these circumstances*, would come to imply nothing more than protection against arbitrary ejectment.

8. Later on in his note, Mr. Harrison enunciates a principle which, to my thinking, misleads him seriously in his whole view of the subject, *viz.*, that we need only look to the statutory rights of individual ryots as now existing or capable of receiving legal proof, and need not in any way consider what is historically and constitutionally the status of the whole cultivating class, or of any section of it. These two modes of viewing the subject are radically opposed, and lead to very different conclusions. The first method minimises the existent rights of the cultivators, and makes every fresh concession given them in the law appear an encroachment upon the (so-called) higher rights of the zemindar. By the other process we endeavour to discover the relative positions of the zemindar and the ryot *before* the statute-law began to interfere; and we admit change so far, and so far only, as this can be shown to be necessarily involved in the wording of that law. It is, to my mind, absurd to say that when the Legislature and the Government, in 1793, spoke of the rights of "the ryots," they referred only to the actual individuals then holding lands, and to special privileges attached to them as individuals, and that no one can now-a-days claim the same rights, unless he can prove legally that he is "the true descendant and successor" of a Permanent Settlement ryot. A "resident cultivator," wherever found, has, in my opinion, *now* every right that a resident cultivator had in 1793, always provided that these have not been filched from him by modern legislation.

9. I am not myself at all captivated by Mr. Harrison's scheme of compensating ryots of over three years' standing for ejectment on refusal to pay any rate of rent their landlord may choose to ask, although I voted for its incorporation in the Bill in default of getting my own proposal carried. I much prefer the simplicity of a return to the constitutional principle of protecting against ejectment the true resident ryots (meaning thereby all settled cultivators), so long as they pay (not the rates any individual landlord likes to demand, but) the rates laid down by authority from time to time as fair and equitable rates for the tract of country in which they live.

10. I attach no value to the argument that the rates ruling in 1793 were probably rack-rents, because it can fairly be demonstrated that it was the intention of the Government to allow those who paid them to benefit to the full by all subsequent improvements in prices, just as the zemindars who had to pay a rack-revenue were to benefit by such improvements, as well as by the extension of cultivation. At the same time it is certain that ryots' rents in 1793 were often very far from being rack-rents. They generally held much more land than they nominally paid rent for.

11. Again, it would be interesting to see the proof of the statement that, between 1793 and 1859, "the landlords have been able to enhance up to the maximum the ryots have been able to pay." There is, I venture to say, no evidence in existence anywhere sufficient to warrant this broad statement, which is, I maintain, a mere assumption. The contrary proposition that, before 1859, no such thing as systematic enhancement was dreamt of (though like most sweeping statements open to some qualification) would admit of far more satisfactory argument.

I need not, however, add anything to what Mr. O'Kinealy remarks on this subject at pages 32 to 36 of his note.

A. MACKENZIE.

The 31st May 1880.

Propositions by the PRESIDENT *and* MR. FIELD *for the solution of some unsettled questions.*

1. THE following persons and their heirs or transferrees shall be deemed to be tenure-holders within the meaning of sections 8, 9 and 10 of the Bill:—

(*a*) every person let into possession of a single lot, including more than 50 standard beeghas of land by a proprietor [or by Government in a khas mehal], before or after the commencement of this Act:

(*b*) every person let into possession of a single lot, including 50 or less than 50 standard beeghas of land by a proprietor [or by Government in a khas mehal], before or after the commencement of this Act, if more than the half of such land was, at the time of such letting into possession, in the occupation of ryots.

It is immaterial whether at the time of letting into possession the land was wholly or partly waste or cultivated, or in the possession of ryots or otherwise.

In this and the following proposition the lot may of course consist of several plots, not adjoining each other.

2. The following persons and their heirs or transferrees shall be deemed to be under-tenure-holders within the meaning of sections 8, 9 and 10 of the Bill:—

(*a*) every person let into possession of a single lot, including more than 50 standard beeghas of land by a tenure-holder or under-tenure-holder, before or after the commencement of this Act:

(*b*) every person let into possession of a single lot, including 50 or less than 50 standard beeghas of land by a tenure-holder or under-tenure-holder, before or after the commencement of this Act, if more than the half of such land was at the time of such letting into possession in the occupation of ryots.

3. No such tenure-holder as is mentioned in proposition 1, no such under-tenure-holder as is mentioned in proposition 2, and no *mukarraridar* or *istimrardar* can acquire a right of occupancy in land which is part of his tenure or under-tenure; but any such land, the cultivation of which has been carried on for twelve years continuously, wholly on behalf of any such tenure-holder or under-tenure-holder, and at his sole risk, with his own stock, or by his servants or by hired labourers, or partly by some and partly by others of these persons, shall become the *khamar* land of such tenure-holder or under-tenure-holder.

This might be adopted as a general definition in the Bill, following the definition of *Zerat* for Behar—see section 81.

4. Any such tenure-holder or under-tenure-holder shall be entitled to more favourable rates than those mentioned in section 9 if not less than three-fourths of the land was unreclaimed at the time of the original letting into possession, and such letting into possession was for the purpose of reclamation.

According to the usage of all countries, those who originally brought the land into cultivation are entitled to special consideration.

Should it be three-fourths or half?

5. Section 9, as it now stands, takes account only of the gross rents payable to the tenure-holder or under-tenure-holder; but account should also be taken of land occupied and cultivated by him, or granted *rent-free* by him. A reasonable rent should be estimated for all such land and taken into account.

6. Having regard to the actual rents now paid, we think that 10 per cent. of the net collections is not enough for the profit of the tenure-holder or under-tenure-holder. We have carefully examined this point, and we think that the courts should be allowed to give what is fair and equitable, provided that (*a*) in the case of a reclaiming lease-holder (*jangalburi talukdar*) not less than (say) twenty per cent. of the net collections shall be given, and (*b*) in the case of other tenure-holders and under-tenure-holders not more than (say) thirty per cent. shall be given.

Shall we declare all permanent tenures and under-tenures to be heritable, transferrable, &c.? See section 11 of the last draft of the Bill.

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[1] There is an enormous difference between tenures in estates permanently settled in 1793 and estates settled permanently or temporarily at a more recent period. In the former the waste land was not taken into account in fixing the Government revenue. The zemindar benefited by all he got from a reclaiming tenant, and, regarding this land as

6. The following persons shall be deemed to be ryots capable of acquiring a right of occupancy :—

(*a*) every person let into possession of a single lot, including 50 or less than 50 standard beeghas of land by a proprietor, tenure-holder, or under tenure-holder, before or after the commencement of this Act, if more than the half of such lot was not, at the time of such letting into possession, in the occupation of ryots.

Consider the definition of ryot in the Bill.

(*b*) every person holding immediately under any such tenure-holder as is mentioned in proposition 1, or under any such under tenure-holders as is mentioned in proposition 2, and who is not himself an under tenure-holder, if before such person was let into possession no other person had acquired a right of occupancy in the same land under the provisions of this Act, or Act X of 1859, or Act VIII (B. C.) of 1869:

(*c*) every ryot holding immediately under a *mukarraridar* or *istemrardar*.

7. One person only can have a right of occupancy in land at the same time.

8. As a necessary consequence of the previous propositions, a right of occupancy may be acquired by "holding" merely without *cultivating*, and the present draft Bill must be amended accordingly.

9. The Act to be silent about *sub-letting*, neither prohibiting nor authoritatively recognising the practice by ryots.

10. The operation of the enhancement provisions in the present draft Bill shall be subject to the following rules :—

(*a*) the enhanced money rent of an occupancy ryot shall not exceed 25 per cent. of the average annual value of the gross produce :

This way of putting it makes it clear that the 25 per cent. rule is not to be applied to reduce existing rents.

(*b*) such annual value shall be calculated upon staple crops only. Board of Revenue to declare staples for areas and to make rules for calculation.

Special crops not to be taken into account, as this discourages agricultural improvement.

11. The rent in kind of an occupancy ryot, who receives no assistance in the way of seed, labour, &c., from his landlord, shall not exceed 50 per cent. of the gross produce in the case of staple crops. In the case of special crops, the parties may make a special contract, [in writing ?]. In the absence of such special contract, the courts shall not give more than 25 per cent. of the average annual value of the gross produce of staple crops.

Shall this be made retro-active to relieve the Behar ryots ?

12. In order to facilitate the enhancement and abatement of rents on the ground of rise or fall of *prices* it is proposed—

That the Collector of every district shall prepare annually and publish in the Gazette average price lists of the staple crops for suitable areas.

The areas would be settled by the Board of Revenue upon the recommendation of the Collector.

The prices at certain fixed marts should be taken, the same marts being always adhered to. The price of produce in the field where it is grown varies according to the distance of the usual market, and the necessary cost of carriage thereto. The price in different markets varies according to their proximity to larger markets or port of export and the facilities for carriage thereto. By taking always the prices of the same markets the normal variation as affected by external and general, as distinguished from local and particular causes, is more likely to be obtained.

The Gazette copy of these price lists should be made relevant—admissible as evidence, in cases between landlords and tenants—concerned with the enhancement or settlement of rents.

To secure uniformity, the Board should be empowered to make rules for the preparation of these price lists, and should have a power of revision.

13. Increase of the productive powers of the land may be brought about (1) by the agency or at the expense of the ryot; or (2) by the agency or at the expense of the landlord; or (3) without the agency or expense of either, by external causes. In the *first* case the ryot is not liable to enhancement. In the *second* and *third* cases he is liable, but the present law gives the whole increment to the landlord. It would be equitable to give the whole increment to the landlord in case 2, and in case 3 to divide the increment, share and share alike, between the landlord and tenant.

14. In the case of an increment due to rise of prices only, the present law gives all the increase to the landlord. It is proposed to divide it between landlord and tenant, giving a moiety to each.

The 11th May 1880. C. D. FIELD.

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it were revenue-free, he let it at easy terms. In the latter the waste has been assessed, and the zemindar must get the revenue as well as his own profit from the tenure-holder. In temporarily settled estates, the land, when fully cultivated, must pay 70 per cent. of the net collections to Government. Allowing the usual 10 per cent. for collection expenses, there remain only 20 per cent. to be divided between the zemindar and tenure-holder.

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48. From G. A. Samuells, Esq., Commissioner of Patna, dated 24th August 1858.
49. Forms of agricultural leases.
50. Forms of conditions of kubooleats.

51. Minutes and Reports by the Board of Revenue on Act X of 1859.
52. Minutes by the Judges of the High Court on Act X of 1859.
53. Proposed method of dealing with the definition of land, &c.
54. Propositions upon the subject of enhancement by Mr. Field.
55. Mr. Field's proposed special procedure for rent suits, dated 20th January 1880.
56. Draft sections 1 to 5 of Landlord and Tenant Bill.
57. Substantive Law (Segment II), sections 49 to 64.
58. Draft Bill (sections 1 to 64) as amended up to 12th March 1880.
59. Draft Bill (Part II), Chapter I, procedure sections 101 to 130.
60. Procedure Segment II (Chapter II).
61. Procedure (Segment III), sections 165 to 224.
62. Segment IV, April 19th, 1880.
63. Draft Bill, dated 10th May 1880.
64. From Collector of Patna, No. 492 R., dated 23rd June 1879.
65. From Collector of Bhagulpore, No. 365 G., dated 25th June 1879.
66. From Collector of 24-Pergunnahs, No. 247 G., dated 26th June 1879.
67. From Officiating Inspector General of Registration, No. 3781, dated 30th June 1879.
68. From Secretary to the Government of Bengal, Revenue Department, No. 443 T., dated 28th June 1879.
69. From Collector of Burdwan, No. 212 G., dated 3rd July 1879.
70. From Collector of Balasore, No. 400, dated 7th July 1879.
71. From Collector of 24-Pergunnahs, No. 301 G., dated 11th July 1879.
72. From Officiating Inspector General of Registration, No. 240, dated 8th July 1879.
73. From Collector of Dinagepore, No. 246 G., dated 12th July 1879.
74. From Covenanted Deputy Collector of Howrah, No. 479, dated 15th July 1879.
75. From Officiating Collector of Bogra, No. 205 G., dated 19th July 1879.
76. From Officiating Collector of Dacca, No. 776, dated 28th July 1879.
77. From Collector of Dinagepore, No. 285 G., dated 28th July 1879.
78. From Under Secretary, Government of Bengal, Revenue Department, No. 1533—624 L. R., dated 2nd August 1879.
79. From Under Secretary, Government of Bengal, Revenue Department, No. 1533—624 L R., dated 7th August 1879.
80. From Deputy Collector, Howrah, No. 587, dated 15th August 1879.
81. From Collector of Purneah, No. 603 G., dated 9th August 1879.
82. From Under Secretary to the Government of Bengal, Revenue Department, No. 1657—663 L R., dated 21st August 1879.
83. From Collector of Gya, No. 1230, dated 19th August 1879.
84. From Collector of Chittagong, No. 526 G., dated 21st August 1879.
85. From Officiating Collector of Pubna, No. 703, dated 30th August 1879.
86. From Collector of Mymensing, No. 783, dated 2nd September 1879.
87. From Officiating Collector of Maldah, No. 401, dated 9th September 1879.
88. From Collector of Mozufferpore, No. 1184 G., dated 11th September 1879.
89. From Collector of Nuddea, No. 1444, dated 11th September 1879.
90. From Collector of Rajshahye, No. 556, dated 9th September 1879.
91. From Collector of Pooree, No. 2285, dated 2nd September 1879.
92. From Officiating Collector of Cuttack, No. 1032, dated 20th September 1879.
93. From Collector of Tipperah, No. 653, dated 24th September 1879.
94. From Officiating Collector of Patna, No. 1175R., dated 17th October 1879.
95. From Officiating Collector of Sarun, No. 583, dated 13th October 1879.
96. From Under Secretary to the Government of Bengal, No. 2187—840L.R., dated 15th October 1879.
97. From Collector of Rungpore, No. 825, dated 3rd November 1879.
98. From Officiating Collector of Maldah, No. 510, dated 6th November 1879.
99. From Registrar of the High Court, No. 1994, dated 19th November 1879.
100. From Officiating Secretary to the Board of Revenue, L. P., No. 1078, dated 27th November 1879.
101. From Officiating Collector of Jessore, No. 1023G, dated 29th November 1879.
102. From Collector of Chumparun, No. 776, dated 8th December 1879.
103. From Officiating Inspector General of Registration, No. 6921, dated 15th December 1879.
104. From Officiating Collector of Beerbhoom, No. R., dated 16th December 1879.
105. From Officiating Registrar, Bengal Secretariat, Revenue Department, No. 2704—1090L.R.
106. From Under Secretary to the Government of Bengal, Revenue Department, No. 2696—1084L.R., dated 18th December 1879.
107. From Commissioner of Dacca, No. 856, dated 23rd December 1879.
108. From Officiating Inspector General of Registration, No. 21, dated 5th January 1880.
109. From Officiating Inspector General of Registration, No. 159, dated 9th January 1880.
110. From Registrar of the High Court, No. 350, dated 13th February 1880.
111. From Under Secretary, Government of Bengal, Revenue Department, No. 469—197L.R., dated 24th February 1880.

112. From Officiating Secretary, Board of Revenue, Lower Provinces, No. 256A., dated 19th March 1880.
113. From Officiating Secretary, Board of Revenue, Lower Provinces, No. 255A., dated 19th March 1880.
114. From Under Secretary, Government of Bengal, Revenue Department, No. 1281—854L.R., dated 24th March 1880.
115. From Collector of 24-Pergunnahs, No. 1077G., dated 25th March 1880.
116. From Officiating Collector of Durbhunga, No. 1973G., dated 31st March 1880.
117. From Officiating Secretary, Board of Revenue, Lower Provinces, No. 520A., dated 12th June 1880.
118. From Officiating Secretary, Board of Revenue, Lower Provinces, No. 553A., dated 21st June 1880.
119. From A. P. MacDonnell, Esq., dated 25th June 1880.
120. Note by the Hon'ble Peary Mohun Mookerjea on the classification of land in the district of Hooghly, dated 16th May 1880.
121. From C. F. Worsley, Esq., dated 10th June 1880.
122. From C. F. Worsley, Esq., dated 19th June 1880.
123. Note by Baboo Brojendro Coomar Seal on Chapter XVIII of the draft Bill, dated 28th May 1880.
124. From F. M. Halliday, Esq., Commissioner of Patna, No. 248R., dated 4th May 1880.
125. Remarks by M. Finucane, Esq., dated 26th May 1880.
126. From Officiating Secretary, Board of Revenue, No. 520A., dated 12th June 1880.
127. From Officiating Secretary, Board of Revenue, No. 552A., dated 21st June 1880.

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